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CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE FEDERAL JUDICIARY AND THE DEPARTMENT OF JUSTICE

JANUARY 27; FEBRUARY 17 AND 29; MARCH 24 AND 28, 1988

Part 5

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CONFIRMATION HEARING ON: JOHN WADE BRORBY, PAUL V. NIEMEYER, RICHARD J. ARCARA, AND SUZANNE B. CONLON

WEDNESDAY, JANUARY 27, 1988

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 9:07 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howell Heflin (acting chairman) presiding.

Also present: Senators Thurmond and Simpson.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; and Robert J. Short, minority chief investigator.

Senator **Heflin**. The committee will come to order.

We have some Senators here who want to introduce their constituents and we will accommodate them since they have other things to do. We will call on them first.

Senator Sarbanes, would you like to come forward and introduce your fellow Marylander?

STATEMENT OF HON. PAUL S. SARBANES, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator **Sarbanes**. Thank you very much, Mr. Chairman. I am pleased to have this opportunity to appear before you and the committee today in order to introduce Paul V. Niemeyer, of Baltimore, who has been nominated by President Reagan to be a U.S. District Court Judge for the District of Maryland.

Paul Niemeyer has a distinguished record of professional practice and public service. Shortly after graduating from the University of Notre Dame Law School in 1966 where he was an editor of the law review, he became associated with the Baltimore law firm of Piper & Marbury. He became a partner of the firm in 1974 and has had an outstanding legal career with the firm as an experienced litigator and a respected member of the State bar.

In addition to providing effective representation for his clients, he has made a number of contributions to the legal profession in Maryland. His firm has actively supported pro bono work and he has served with distinction on many important professional panels both for the State and local bar associations.

From 1978 to 1981, he was a member of the State Attorney Grievance Commission and is a member of the important Standing

Committee on Rules of Practice and Procedure of the Court of Appeals of Maryland.

He has been widely recognized and praised for his work as chairman of the subcommittee that revised the Maryland Rules of Procedure, a long overdue effort that completely rewrote the procedural rules in Maryland to bring them more in line with the Federal rules.

The chief judge of the Maryland Court of Appeals referred to Paul Niemeyer as "the father of the new rules," and he received the Special Merit Citation Award from the American Judicature Society for this work.

He also coauthored the definitive textbook that explains the new rules, and he personally undertook to conduct throughout the State a series of seminars and briefings and meetings for practitioners in order to explain the new rules. He is a fellow of the American College of Trial Lawyers and a member of the American Law Institute.

Paul Niemeyer's experience, his skills, character and dedication will be a strong addition to the Federal district bench in Maryland, will help that court to maintain its traditional high standards, of which we are very proud in our State, and will enable it to respond to its ever-increasing caseload.

I am pleased to introduce him to the committee and to recommend Paul Niemeyer's favorable consideration to you.

Thank you very much.

Senator **Heflin**. Thank you. You all will be excused. We will ask Senator D'Amato if he would come forward with his nominee.

Senator **Sarbanes**. Mr. Chairman, I want to add that Mr. Niemeyer is accompanied by his fine family—his wife and two sons.

Senator **Heflin**. We will call on him to introduce them at a later time. Thank you.

Senator D'Amato.

STATEMENT OF HON. ALFONSE D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator **D'Amato**. Good morning, Mr. Chairman. Mr. Chairman, it is my great privilege to have the opportunity to present to this committee a man of outstanding public service.

Mr. Chairman, let me also note that Senator Moynihan, I am sure, will have something for the record. I have not seen him this morning, but when he learned of Dick Arcara's nomination by the President, he personally called me and called Mr. Arcara to commend the President for the excellence of his recommendation.

And if I might, I would like to take the time out to just read some excerpts from the Buffalo News, a newspaper which has quite a circulation and covers the western region of New York where Mr. Arcara is from.

It says, "Arcara is a career prosecutor of impeccable reputation, having served as U.S. attorney for the Buffalo region for 6 years until his election as district attorney in 1981. His reelection as district attorney 2 years ago demonstrated the approval of his work by the county's voters.

"Arcara's position as president of the National District Attorneys Association and his status as president-elect of the New York State District Attorneys Association testify to the respect in which he is held by his peers both in the State and across the Nation.

"It is also worthy of note," the editorial goes on to say, "that Arcara, a Republican, was selected in 1980 by then Governor Hugh L. Carey and Attorney General Robert Abrams, both Democrats, to head the State's Organized Crime Task Force, a post he subsequently declined."

Mr. Chairman, let me simply say that I have had the opportunity to present many, many nominees to this committee in the past 7 years. Never have I had the opportunity to present someone who so uniquely has the characteristics, the temperament, the ability, and the dedication to serve not only as a distinguished lawyer in his State, but who possesses the quality to be an outstanding Federal judge who has demonstrated a record of public service second to none.

His public service, Mr. Chairman, spans the time that he graduated from law school in 1965, Villanova, right through to today. So I am deeply privileged to recommend Richard Arcara to this committee for favorable consideration as a district court judge in the Western District of New York.

Senator **HEFLIN**. Well, thank you, Senator D'Amato. We are pleased that you are here to introduce your nominee, and we will let you be excused now to go about your many duties and we will call on the nominee a little later for some questions.

Senator **D'AMATO**. Thank you very much, Mr. Chairman.

Senator **THURMOND**. I just want to tell the nominee that he is very fortunate to have such an able Senator here endorsing him so highly.

Mr. **ARCARA**. Thank you very much.

Senator **D'AMATO**. Thank you, Mr. Chairman.

Senator **HEFLIN**. Senator Mikulski, would you like to come forward and make an introductory statement? I think Mr. Niemeyer was previously brought to the witness table by Senator Sarbanes, but we would be delighted for you to have Mr. Niemeyer come back with you and for you to make whatever introductory remarks you would like to make.

STATEMENT OF HON. BARBARA MIKULSKI, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator **MIKULSKI**. Thank you very much, Senator Heflin and members of the Judiciary Committee. I come here today to introduce Mr. Niemeyer, a distinguished member of the Maryland Bar Association, to the committee.

We in Maryland have enjoyed the historic tradition of being bipartisan—actually, non-partisan—when it comes to our judicial nominees, knowing the importance that they play. Mr. Niemeyer is the President's nominee for the Federal District Court of Maryland. He is joined today by his wife and his two sons. Another is away at college, but I am sure he is rooting for his dad wherever he is.

At the outset, I would like to thank you, Mr. Chairman, for considering Mr. Niemeyer so promptly in this first hearing of the Second Session of the 100th Congress, and your consideration of this nomination, and I look forward to reviewing your findings upon completion of your hearings.

Let me just tell you about Mr. Niemeyer. Upon completing his education, he chose to make Maryland his home, lived there since 1966, and is a member of the firm of Piper & Marbury—that is a very distinguished Maryland law firm—and was elected partner of that firm in 1974.

After being notified by the committee of Mr. Niemeyer's nomination, I consulted with the bar association in Maryland and I am pleased to report that the Committee on Judicial Appointments of the State Bar reported that Mr. Niemeyer is highly qualified to be a Federal district court judge.

But Mr. Niemeyer is more than a good lawyer, a partner in a firm and with a bar association recommendation. He is someone who has worked long and hard to make sure the courts in Maryland work well for everyone.

Mr. Niemeyer chaired the committee charged with the responsibility of rewriting Maryland's Rules of Procedures, and as lawyers yourselves, I think you know how tedious, how thankless, but how important and critical that job is. He is regarded as the father of the Maryland rules and was awarded a special merit citation by the American Judicature Society in recognition of his work. He coauthored "Maryland Rules Commentary," the textbook explaining the new rules.

He is a fellow of the American Trial Lawyers, a member of the American Law Institute, both distinguished legal associations. He is a lawyer's lawyer who I think will have a sensitivity to the people.

Mr. Chairman, I am delighted today to at least introduce to the committee for its consideration, its review and its scrutiny a distinguished Maryland citizen, Mr. Paul Niemeyer.

Senator **Heflin**. Thank you.

Do you have any comments or statement you want to make at this time, Senator Thurmond?

Senator **Thurmond**. I do not have any statement. I want to congratulate you on having this able Senator here endorsing you so highly.

Mr. **Niemeyer**. Thank you, Senator.

Senator **Heflin**. Thank you.

Senator Simpson has come in and would like to make an introduction. If you will bring your nominee to the witness table and give us your words of wisdom, we would appreciate it.

We also have an introductory statement from Senator Wallop, who could not be here, but it will be made a part of the record.

[Statement follows:]

STATEMENT OF THE HONORABLE MALCOLM WALLOP
ON THE NOMINATION OF WADE BRORBY
TO THE 10TH CIRCUIT COURT OF APPEALS
JANUARY 27, 1988

It is with great pleasure and pride that I present to the Judiciary Committee today Wade Brorby. Mr. Brorby, one of Wyoming's outstanding attorneys, has been nominated to the 10th Circuit Court of Appeals. I had very much wanted to be at today's hearing, but regrettably, another commitment forces me to be out of the country. I am delighted, however, to submit this statement by way of introducing, and heartily endorsing, Mr. Brorby.

Permit me to take just a moment to discuss the selection process the Wyoming congressional delegation employed to select Mr. Brorby as its nominee. As soon as the vacancy occurred, I invited my colleagues, Senator Simpson and Congressman Cheney, to again participate in the creation of a merit selection panel, charged with recommending nominees, as we had done before. Each member of the delegation appointed one prominent member of the Wyoming Bar to the panel. I also appointed the former Justice of the Wyoming Supreme Court, the President of the Wyoming Bar Association, and a Wyoming member of the American College of Trial Lawyers to serve on the committee. The panel then went through the process of soliciting applicants, interviewing them both individually and collectively, and finally recommending its top three choices to the Wyoming delegation. We then reviewed all of the applications, not just those recommended by the merit selection panel, and I consulted with the Chairman of the Merit Committee about the candidates before making our selection. Once the congressional delegation chose a nominee we then, of course, submitted our recommendation to the President.

We believe that this screening process, involving the nominee's peers in the legal and judicial communities, has allowed us to put forward the best candidate that Wyoming has to offer. In this regard, I want to note that Wade Brorby was not only the first choice of the delegation but of the merit selection panel as well.

Wade Brorby brings tremendous qualifications and strong professional experience to this position. He was raised in Upton and Newcastle, Wyoming, and attended the University of Wyoming, earning his J.D. with Honor in 1958. Upon graduation from law school, he served three years in the Air Force as a Legal Officer in the Judge Advocate General's Office. After his honorable discharge as a Captain in 1961, he entered private practice in Gillette, Wyoming.

In both his successful private practice and in his 8 years of service as Campbell County Prosecuting Attorney, Wade has accrued an incredible breadth of legal experience. He has been engaged in hundreds of cases, in both state and federal courts, representing clients ranging from banks, school boards and energy companies to small businesses, ranchers, and private individuals.

In addition, he has devoted his time and considerable abilities to numerous judicial and legal associations and has contributed his services to many civic organizations and boards in Gillette. Through both his professional and community service he has earned a reputation as a highly-skilled, diligent and personable individual of keen intellect and unquestioned integrity. He is known for his fairness, his energy, and his dedication to the law. His experience is outstanding within the Wyoming legal community.

The Wyoming congressional delegation is proud of, and enthusiastic about, this nomination. Wade Brorby represents the best of what our State has to offer and we now offer his services to the Nation. I have no doubt he will serve on the 10th Circuit Court of Appeals with distinction. I urge the Committee to act in the most expeditious manner possible to approve his nomination.

Thank you.

Senator **Heflin**. Senator Simpson.

STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator **Simpson**. Mr. Chairman, I thank you and Senator Thurmond very much for your courtesies and I am sorry to be late; I regret that greatly. There was nothing I could do about it.

It is a great honor and privilege to be here and I thank the Chairman for setting this hearing. It has been a long haul for my old friend, Wade Brorby, but I want to say to you that I have known Wade Brorby since we attended law school together at the University of Wyoming. He and I and Ann and Miriam, his wife, are old friends, but that is not how he got here.

He got here because the judiciary and the lawyers of the State of Wyoming selected him. He was the top person presented to us. Without question, he was the top choice of a blue-ribbon group that the Wyoming delegation appointed to look into that.

So he graduated with honors, cum laude, from the University of Wyoming Law School. I did not, as I recall, graduate with those same honors. I think it was Senator Hollings who once said he did not graduate cum laude; he graduated "thank the laude." [Laughter.]

I think that was me, also.

The thing that distorted the grade curve in our class was that Wade and four others had grades that entitled them to that remarkable honor of cum laude and the other 13 of us had to really scratch around to batter through the curve and it kept us alert.

You will recall I said during the Bork hearings that members of the media asked for our law school transcripts. Do you remember that? A shocking thing. I said, well, do not worry about me; I graduated in the top 20 of my class. They said marvelous, but they did not know there were only 18 in the class, and I was one of those 18 with Wade Brorby.

I do express the regret of our senior member of the delegation, Senator Malcolm Wallop who was selected by the President to attend the funeral of Cheng Ching Quo in China, and he is traveling today, and cannot be here.

You do not need much more from me. As I say, I have known Wade Brorby nearly a lifetime. He has practiced law with great distinction in the city of Gillette, Wyoming, a city of remarkable transition from a sleepy town when he got there and then through the energy boom, an extraordinary, vital community, and it still is.

Following his law school graduation, he had a 3-year stint in the Air Force. Not only has he actively and avidly practiced law, he has also been a very active member in the Gillette community and a member of the board of directors of many Campbell County and Gillette service clubs and social and business organizations.

He has at every step consistently handled himself with great distinction and he is a class person. In his law school days, he was on the editorial board of the Wyoming University Law School Journal and on the dean's list, and his practice of law and his association with the legal community in Wyoming exemplify his character and fitness to be a judge.

He and his lovely wife, Miriam, are delightful people whom my wife and I are honored to count among our longtime and dear friends. So I heartily and earnestly support him as a nominee for the Tenth Circuit Court of Appeals and unhesitatingly recommend him to you and respectfully urge your expeditious handling of the nomination by this committee because this one has been in the pipeline for many, many months.

As I say, he was selected by a remarkable blue ribbon panel of respected and seasoned lawyers and judges, and the Tenth Circuit of Appeals seat for which Wade has been nominated has been vacant since April 8th of last year. The senior judge of that court has visited with the Chairman, Senator Biden, several times, and the staff, and they have been very accommodating and we appreciate that.

Now, we have a second Tenth Circuit Court of Appeals seat that has been vacant for over 3 years. The backlog in caseload in that circuit is becoming more than an embarrassment. It is actually a disservice to those of us that love the practice and the profession, and a disservice to the administration of justice.

With this addition of Wade Brorby, who thoroughly thrives on hard work—I know that he will go a long way toward resolving that situation and breaking through that backlog.

In conclusion, Mr. Chairman and Senator Thurmond, there could not be a finer selection, and I am going to remain here if I can assist or inquire. I thank you very much for accelerating this appointment in the new session of the Congress.

I thank you very much, Mr. Chairman.

Senator HEFLIN. Senator Thurmond, do you want to comment at this time?

Senator THURMOND. Well, I just want to tell the appointee that he is lucky to have such an able and highly respected Senator here endorsing him like Senator Simpson. He is the Assistant Majority Leader, he is a member of this committee. If anybody can help you, he can. Congratulations.

Mr. BRORBY. Thank you, sir.

Senator HEFLIN. Senator Simpson, would you like to introduce any members of the family since you know them very personally?

Senator SIMPSON. Indeed, I do see Miriam Brorby here and the children are grown and out in the world. Miriam Brorby.

[Ms. Brorby stood.]

Senator HEFLIN. We know you have plenty to do, Senator Simpson, so we would be glad to excuse you and not require that you stay here and listen to every bit of the testimony. So you are excused if you care to go.

Senator SIMPSON. Mr. Chairman, I thank you very much. Thank you for your courtesy.

Senator HEFLIN. I see that Senator Dixon has arrived, and if you will come forward with the nominee that you intend to introduce, we would be delighted to see you.

We can save time while pleasantries are exchanged. We also have a statement from Senator Simon, too, that will be entered into the record. He appears to be detained doing something else today.

[Statement follows:]

STATEMENT OF THE HONORABLE PAUL SIMON
HEARING ON SUZANNE B. CONLON
JANUARY 27, 1988

I welcome the opportunity to present to this Committee one of my distinguished constituents, Suzanne B. Conlon. Ms. Conlon has been nominated to a seat on the United States District Court for the Northern District of Illinois.

At the outset I would like to thank the Chairman for holding this hearing. Unfortunately this position has been vacant for far too long as a result of the Administration's delay of nearly two and a half years in choosing a nominee. I commend the Chairman for scheduling this hearing and doing his part to see this vacancy filled.

Suzanne Conlon has an excellent academic and professional record. After graduating from Mundelein College, she attended the Loyola University School of Law where she distinguished herself by graduating cum laude and ranking third in her class. She then spent three years clerking for the former Chief Judge of the Northern Illinois District Court, the Honorable Edwin A. Robson. Upon completion of her clerkship she worked as an associate in two well-respected Chicago law firms, Schiff Hardin & Waite and Pattishall, McAuliffe & Hostetter.

In 1972 Ms. Conlon moved from private practice to the United States Attorney's Office. During her nine years of service Ms. Conlon developed a reputation as a hardworking and fair individual. I have received letters of recommendation from both a fellow Assistant United States Attorney and defense attorneys praising her for her thoroughness and even temperament. I am pleased to note that in 1980 Ms. Conlon received a special commendation from the former Attorney General Ben Civiletti for successful prosecution of air piracy and kidnap murder cases. This honor, along with her nine years as an Assistant United States Attorney, reflect Ms. Conlon's commitment to public service, a commitment she can be proud of.

Since leaving the U.S. Attorney's Office in 1986, Ms. Conlon has worked for the United States Sentencing Commission and is currently its Executive Director.

In closing I wish to note that I am particularly pleased to be to able to speak not only on behalf of a fine Illinois citizen, but on behalf of a female nominee to the federal court. As of September of 1987, the Reagan Administration had nominated 320 people to the federal courts. Of these only five were black and 25 were women. I find this to be a very sorry record indeed.

I am pleased the Committee now has the opportunity to hold hearings on Ms. Conlon, and I hope that her nomination will spark the selection of other talented women for the federal judiciary.

Senator HEFLIN Senator Dixon, we are delighted to see you.

STATEMENT OF HON. ALAN J. DIXON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DIXON. Thank you, Mr. Chairman, Senator Thurmond. I am pleased to appear before you this morning to introduce Suzanne B. Conlon, who has been nominated by President Reagan to serve as judge of the U.S. District Court for the Northern District of Illinois.

Suzanne Conlon graduated cum laude from Loyola University School of Law, where she was also on the editorial board of the law review. Following her graduation, she was law clerk to then Chief Judge Edwin A. Robson of the U.S. District Court for Northern Illinois.

During her clerkship, Ms. Conlon was also an assistant professor of law at DePaul University. She taught courses in securities regulation, corporations, and unfair trade practices.

In addition to this academic experience, Ms. Conlon practiced law privately for 3 years in the antitrust, trade regulation, and civil litigation areas. For 10 years, Mr. Chairman, she was an assistant U.S. attorney in Chicago and Los Angeles. She served as Assistant Chief of the Criminal Division and Chief of the Appellate Division. She has been both trial and appellate counsel in cases involving corruption of public officials, narcotics, air piracy, kidnapping, murder, arson, racketeering, bank robbery, and fraud.

Ms. Conlon supervised the Chicago phase of an international investigation of a heroin smuggling and money-laundering operation conducted by one family based in Sicily, Brazil, Switzerland, and northern Illinois.

In 1980, Ms. Conlon received a special commendation from former Attorney General Benjamin Civiletti for her successful prosecution of two cases. The first trial concerned a political terrorist who hijacked a commercial aircraft from Los Angeles to Havana, Cuba. The second case involved a man who kidnapped and murdered the sister of a Los Angeles businessman. Both the hijacker and kidnapper received maximum sentences.

Since May 1986, Ms. Conlon has been employed by the U.S. Sentencing Commission as Deputy General Counsel and then as Executive Director. Ms. Conlon has also been active in a number of professional organizations, such as the Chicago Bar, where she has served as chairman of the Federal Trial Bar Subcommittee.

She is on the board of directors of the Federal Bar Association and has organized many continuing legal education seminars. She was on the board of editors of the Chicago Bar Record for a number of years and she published an article on comparative advertising which was republished in two legal journals.

Mr. Chairman and Senator Thurmond, I believe that this review of Ms. Conlon's career demonstrates the strong qualifications for a seat on the Federal district court. I believe she will be a valuable addition to the Federal bench, I endorse her candidacy, and commend her to the committee.

I thank the Chair.

Senator HEFLIN. Thank you. Would you like to introduce any members of your family while you are here?

Ms. CONLON. Yes, Mr. Chairman. My mother is here from Chicago, and I would also like the Chair to meet a very special person. Commissioner Helen Carruthers from the Sentencing Commission is also here.

Senator HEFLIN. Thank you. Well, we are delighted to have you. We know Senator Dixon has many duties to perform and there is going to be a vote shortly coming up, but before we allow him to leave, Senator Thurmond, would you like to make any comment?

Senator THURMOND. Thank you, Mr. Chairman. I want to congratulate you on having the endorsement of a fine man like Senator Dixon. Also, I have heard Judge Wilkins speak very highly of you and your work down there. And from your record, you have been an assistant U.S. attorney in two or three States and you have done a fine job there in the positions which you filled. I just want to commend you and it will be my pleasure to support you.

Ms. CONLON. Thank you, Senator.

Senator DIXON. I thank the distinguished former chairman of the committee for those kind remarks and my dear friend, the former chief justice of the Supreme Court of Alabama, for his kind remarks.

Senator HEFLIN. Well, thank you. Are there any other Senators here to make any other introductions?

If not, if all four nominees will come forward, we will give each the oath. If you will raise your right hand and repeat after me, I solemnly swear that the testimony that is given before this committee shall be the truth, the whole truth and nothing but the truth, so help you God.

Mr. BRORBY. I do.

Ms. CONLON. I do.

Mr. ARCARA. I do.

Mr. NIEMEYER. I do.

Senator HEFLIN. All right. Since we have a vote on and we are trying to expedite this hearing, which could be rather long, I am going to call Mr. Niemeyer to the witness table first.

Senator THURMOND. Mr. Chairman, could I say just a word?

Senator HEFLIN. Yes, sir.

Senator THURMOND. I am on the Armed Services Committee and we are holding a hearing on the INF Treaty and I just wanted to ask you to excuse me since I have got to go there. I am very interested in these nominees. I have looked into their records. I think all four of them are well qualified and I will be glad to support all of them. I have a few questions here that I may ask you to propound.

Thank you very much.

Senator HEFLIN. All right, sir.

Well, I understand that maybe, Mr. Niemeyer, we will have to reverse since Mr. Brorby is up for the circuit court. Senator Simpson is here and we will start with Mr. Brorby first. I hate to show my ineptness on this, but sometimes we get a little confused. We have to be straightened out by fellow Senators.

Senator SIMPSON. I appreciate that, Mr. Chairman. You did not have to do that and I do appreciate it.

Senator **Heflin**. Well, all the Senators are as busy as they can be and we try to accommodate them in any way we possibly can.

For the hearing's sake, there is an opening statement, but rather than reading it I will submit it for the record.

[Statement follows:]

SENATE COMMITTEE ON THE JUDICIARY

HEARING ON JUDICIAL NOMINATIONS

JANUARY 27, 1988, 10:00 A.M.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

THIS MORNING, THE JUDICIARY COMMITTEE HOLDS ITS 19TH HEARING IN THIS CONGRESS TO CONSIDER NOMINATIONS TO THE LOWER FEDERAL COURTS.

TODAY, WE WILL TAKE TESTIMONY ON FOUR NOMINATIONS. WADE BRORBY OF WYOMING HAS BEEN NOMINATED TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT. THE OTHER THREE NOMINATIONS ARE FOR THE DISTRICT COURTS: SUZANNE B. CONLON FOR THE NORTHERN DISTRICT OF ILLINOIS, RICHARD ARCARA FOR THE WESTERN DISTRICT OF NEW YORK, AND PAUL NIEMEYER FOR THE DISTRICT OF MARYLAND.

AS WE CUSTOMARILY DO, WE WILL HEAR FIRST FROM SENATORS WHO WISH TO INTRODUCE NOMINEES TO THE COMMITTEE. BEFORE WE BEGIN THESE INTRODUCTIONS, LET ME NOTE FOR THE RECORD THAT ALL FOUR NOMINEES BEFORE THE COMMITTEE THIS MORNING HAVE COMPLETED EXTENSIVE QUESTIONNAIRES ON THEIR QUALIFICATIONS, EXPERIENCE, AND FINANCIAL SITUATION. THE PUBLICLY AVAILABLE PORTIONS OF THESE QUESTIONNAIRE RESPONSES WILL BE PRINTED IN THE RECORD OF THIS HEARING. WE WILL ALSO KEEP THE RECORD OPEN FOR A LIMITED TIME FOR FOLLOW-UP QUESTIONS TO THE NOMINEES, AND FOR ADDITIONAL QUESTIONS THAT MAY BE SUBMITTED BY MEMBERS OF THE COMMITTEE WHO ARE UNABLE TO BE PRESENT THIS MORNING. WE WILL ALSO INCLUDE IN THE RECORD THE COMPLETE INTRODUCTORY STATEMENTS OF SENATORS, INCLUDING ANY WHO WERE UNABLE TO ATTEND IN PERSON THIS MORNING DUE TO SCHEDULING CONFLICTS.

Senator **Heflin**. Mr. Brorby, the tenth circuit has a serious case backlog problem. In 1986, the average time from filing to the disposition of appeals was more than 14 months. As a result, although the number of appeals filed in 1986 declined from the previous year, the Tenth Circuit's backlog of pending cases grew.

There are now two vacancies on the tenth circuit, but that does not completely explain the delay in case processing, since the statistics are compiled on a per-judge basis. The tenth circuit needs a judge who can jump in, roll up his sleeves, and get to work on reducing the backlog and deciding new cases more quickly.

Are you prepared to help the tenth circuit deal with this serious problem?

TESTIMONY OF JOHN WADE BRORBY, GILLETTE, WY, TO BE U.S. CIRCUIT JUDGE FOR THE 10TH CIRCUIT

Mr. **Brorby**. Yes, sir, Senator Heflin, more than prepared. As a matter of fact, I intend on going to retreat for this court to discuss ways to deal with this backlog in the next 2 weeks.

Very frankly, it is more than a matter of concern, and that is one of the things, quite frankly, that interests me in the job is I enjoy a big challenge and lots of work.

Senator **Heflin**. There has been some controversy in Wyoming about your role in an investigation conducted by the Campbell County Memorial Hospital Board in 1985 to 1986 into alleged drug use by hospital employees.

You were at the time counsel to the Board. Please describe briefly your role in the investigation without violating any attorney-client privilege.

Mr. **Brorby**. Very briefly, Senator, I advised the Board. One of the things the Board did was hold their own hearings where some of the suspects appeared with counsel. These hearings were reported. Various actions were taken. In some cases, the individuals were cleared; in some cases, the individuals were terminated.

I do not know if that fully answers your question, but that would be a brief overview of it.

Senator **Heflin**. You were assisted in this investigation by a deputy county sheriff who was made available to you as counsel to the Board. What role did this deputy play in the hospital investigation?

Mr. **Brorby**. Generally speaking, Senator, he would collect various information, report it to the Board. Frequently, it was investigation material that I would ask for that we would need to know about this matter or that matter.

Senator **Heflin**. It has been reported to the committee that this deputy sheriff also testified extensively before a county grand jury on drug investigations about the same time as the hospital investigation.

Did you take steps to ensure that the information you received from the deputy did not include confidential grand jury testimony or information derived from such testimony? If so, how did you seek to avoid using confidential grand jury information, and were your efforts successful?

Mr. **Brorby**. Senator, I did take efforts. The efforts which I took basically revolved around two things. One, I told the county attorney, I told the deputy sheriff involved I did not want to be privy to or receptive of anything from the grand jury. I believe they were successful.

Senator **Heflin**. A question has also been raised about the role of your law partner, Tom Roberts, in this investigation. Roberts served at that time as a special deputy county attorney. Do you know what involvement he had in that role with the grand jury proceedings then underway with regard to drug violations?

Mr. **Brorby**. I do not know with precision or with detail, Senator, what role Mr. Roberts may have played. I have been told that he played essentially no role or a very minor role in it.

Senator **Heflin**. What role did Mr. Roberts play in the hospital board investigation?

Mr. **Brorby**. Next to none.

Senator **Heflin**. Mr. Roberts was working for the county attorney who supervised the grand jury at the same time that the hospital was conducting its investigation. At the time, did you perceive that your role and that of your law partner in these parallel investigations created the appearance of a conflict of interest? What steps, if any, did you take to dispel this appearance?

Mr. **Brorby**. Yes, sir, that was a concern of mine. I had a visit with my partner, Mr. Roberts. We had a conversation as to what he was or was not doing. I told him my feelings. It would be highly improper if he were involved in it. I assume he extricated himself if he, in fact, was involved in it.

Senator **Heflin**. There may be further questions submitted in writing to you on this issue, as well as other issues.

The problem of avoiding conflicts of interest in a community where there are very few lawyers is a recurring one. It must happen rather frequently that someone comes to you for legal advice in a situation in which you have been advising another party with conflicting interest in the past.

How have you endeavored to avoid conflicts of interest in your law practice? What system do you use to make sure that neither you nor any other member of your firm is vulnerable to the charge that you have sacrificed one client's interest for that of another client or former client?

Mr. **Brorby**. Senator, the first thing we do within the firm—we have a two-pronged method of attempting to avoid conflicts. One, we have at least a weekly meeting with the partners to discuss the cases that are worked on and the parties the firm is representing.

Secondly, we have had, and have maintained it for several years, a computerized listing of all clients to avoid this. It does happen on occasion where you run into two clients—we very scrupulously adhere to the Code of Professional Conduct in that we sit both clients down, tell them of our conflict, or recommend to them other counsel.

In some cases the clients—one of them has said I do not need a lawyer, you represent the other side, which is proper under the Code of Professional Responsibility as long as there has been full consultation, advisement and consent of both of the clients.

Senator **Heflin**. Your home town is how large where you live?

Mr. **Brorby**. Well, I am not sure; somewhere between 12,000—it has grown. Maybe 12, 15,000 is a rough guess, Senator.

Senator **Heflin**. Well, sometimes in those smaller cities the clients are pretty well cognizant of who your other clients are.

Mr. **Brorby**. Very definitely.

Senator **Heflin**. You do not have big-city problems.

Mr. **Brorby**. No, sir.

Senator **Heflin**. They have some sort of self-protecting approach in regard to conflicts of interest.

How important, in your view, is it for a lawyer to avoid even the appearance of a conflict of interest?

Mr. **Brorby**. I think it is very important.

Senator **Heflin**. Your questionnaire responses indicate that most of your litigation experience has been before the State courts. In terms of recent experience, it does not appear that you have been counsel of record in any reported Federal cases since the mid-1970s.

Please describe some of the cases you have tried in recent years in Federal courts.

Mr. **Brorby**. Let me work backwards, if you will, please. I had a case that was to be tried last fall. I felt under the circumstances that it would probably be improper if I were to try it. I turned that case over to one of my partners.

I tried a case—the time escapes me, Senator; I am going to say six, seven years ago—representing a mineral company trying to perfect a mineral claim, which was successful. There has been another case or two, I believe, within the past seven or eight years and they escape me right offhand.

Senator **Heflin**. When did you last try a case to a verdict in the Federal court?

Mr. **Brorby**. The last case I would have tried to verdict in a Federal court would have been the mineral case that I just referred to.

Senator **Heflin**. You note in your questionnaire responses that you have appeared in court occasionally in the past 3 years. What contact have you had with litigation process in recent years? For example, have you actively supervised trials conducted by other attorneys in your firm? Have you participated in other activities to keep your litigation skills current and sharp?

Mr. **Brorby**. Very much so, Senator. I have tried to appear in court in a litigated situation during the past several years at least two or three times so I can keep my basic skills sharp. On top of that, I have supervised all of the litigation of my firm.

Senator **Heflin**. I also note that you are a member of the Wyoming Supreme Court Civil Rules Committee, which makes recommendations pertaining to changes in those rules.

Mr. **Brorby**. That is correct.

Senator **Heflin**. You served 4 years as a member, and for 2 years as chairman, of the Wyoming Judicial Supervisory Commission. What were your duties in this position?

Mr. **Brorby**. My duties were primarily to receive complaints concerning members of the bench, to investigate those complaints, then to serve as a recommending agency to the Supreme Court of Wyoming. We were actually an adjunct arm to the supreme court.

Basically, we would do the factfinding and then recommend, and in most cases the recommendation to the supreme court would have been the complaint is unfounded.

Senator HEFLIN. On page 25 of your questionnaire you state that, quote, "All actions taken by the commission are privileged, but I believe I can safely state that the chairman of this commission has assured that the constitutional mandates were carried out."

Without breaching confidentiality, can you be more specific about your activities as chairman of this commission?

Mr. BRORBY. To my knowledge, it was the first time the commission ever held a hearing on a judge. I have to choose my words with great care. That individual is no longer a judge.

For many years, according to the files my predecessor turned over to me, it appears like many of the complaints were probably not properly or thoroughly investigated. I like to think, Senator, that during that tenure of office every complaint from every person was investigated, even though on the face of it it may have appeared to be without merit.

Senator HEFLIN. Your service on this commission has given you a perspective on the ethical pitfalls which confront judges. What did you learn from this experience that will help you to avoid similar pitfalls if you are confirmed as a Federal appellate judge?

Mr. BRORBY. Several things. I think that I learned that it is absolutely essential for a judge to have a degree of humility and not arrogance. I think it is absolutely essential for a judge to be well organized and keep his work flowing. I think it is essential for a judge to do his homework.

Senator HEFLIN. Do you have friends or anybody that you would like to introduce here to the committee at this time? I am going to conclude my questions and is there anyone you would like to introduce?

Mr. BRORBY. Just my delightful wife, Senator, who has already been introduced.

Senator HEFLIN. All right. Senator Simpson.

Senator SIMPSON. Mr. Chairman, thank you very much. Your last question was interesting to me when you described the pitfalls of the learning process. I practiced law across the mountain from you for 18 years and when I reviewed the material that was presented to the committee on your nomination and the questions that arose, I thought to myself I have been involved in every single one of those same kinds of situations, which is called the practice of law in small communities.

My partner and I for years had that tough decision of representing people and saying "this is a conflict," putting them both in front of us sometimes and saying, "you know, take a choice." Of course, we were always heartbroken if they said, well, neither one of us are going to stay here. And that is a pitfall if you like to eat.

But preparation of minutes for closely-held corporations, little ranch corporations, when they need to have their records ready for the IRS for examination, notary publics, revision of deeds when everyone is fully aware of what is occurring—those things happen in small towns.

And the interesting thing to me, and I think the record is so very clear, is that there was no gain, no nothing, no greed, no monetary or any other type of thing of advancement that came from any one of these small discrepancies which have been resolved through the committee staff and through the membership.

So I was very interested to review those things and the Justice Department was very good in reviewing them, and I was surprised at the consistency of how that happens, especially representing school boards, hospital boards—I was a city attorney—and how that happens in a western practice in a small area.

So I think you presented yourself well and the record is clear on that. I just submit that if there is anything else you wish to say or submit in writing, you should feel free to do so, to what Judge Heflin has just added or others, and you have that opportunity to clarify if there is anything further you wish to do.

But I thank you, Mr. Chairman, and I want to thank Mr. Niemeyer for his courtesy in allowing me to go forward here, and to you, Mr. Chairman, for giving me the opportunity to go forward, and to Wade Brorby and Miriam.

Thank you very much.

Senator HEFLIN. The committee will stand in recess while we go vote and we will return as quickly as we can and proceed with the other nominees' hearings. Thank you very much.

[Recess.]

[Answers of Mr. Brorby to written questions follow:]

RESPONSES FROM WADE BRORBY
TO THE SENATE COMMITTEE ON THE JUDICIARY

1. With regard to the investigation of allegations of drug use by employees of the Campbell County Memorial Hospital, did your law partner, Mr. Roberts, participate in the meeting at which the Board was first apprised of the grand jury activity with regard to drug use by hospital employees? Did he participate in the meeting in subsequent Board meetings on this topic? Did he assist you in preparing for and conducting the interviews of hospital employees?

A: Mr. Roberts was present but played no active role in the discussion. He also came to the second board meeting on the same day. I have no recollection of him attending any subsequent meetings. Mr. Roberts did not assist me in preparing for and conducting the interviews of the hospital employees.

2. The grand jury issued a report on January 30, 1986, that was highly critical of the hospital's actions toward drug abuse among its employees. In light of this criticism, what response do you make to the allegation that you were insensitive to the appearance of a conflict of interest in this situation, in which you were representing the hospital while your law partner was working for the County Attorney who supervised the grand jury? In retrospect, would you have done anything differently?

A: At the time, I did not believe there was an appearance of a conflict of interest There certainly was no actual conflict of interest of any sort. Although, under the circumstances, I do not beleive I could have handled the matter differently, I certainly wish the public perception of what transpired had more closely corresponded to the actual facts of the matter.

3. You had represented the Hospital Board for many years, but shortly after this investigation concluded, the Board decided not to retain you any longer as its counsel. In an "open letter to the community" printed in the Gillette, Wyoming News Record on February 10, 1986, a majority of the Hospital Board members responded to the criticism from the grand jury. That "open letter," a copy of which is attached, included the following statements:

> The hospital entered into our inquiry with a significant amount of trust placed in all the individuals that helped us begin...One of our conclusions was that the board was being directed by those the board trusted to reach certain conclusions and take certain actions with "offending personnel." ...Philosophically, the board and the "initiators" parted company. The board's belief is that rumor and hearsay did not constitute substantive

> evidence for purposes of effecting actions which would have a significant impact on the lives of our employees: particularly where the possibility existed that the actions may be wrongfuly undertaken.

Within the constraints of the attorney-client privilege, do you have any comment on this article?

Some board members were evidently dissatisfied with the handling of this investigation. In hindsight, do you think there is any justification for this dissatisfaction?

A: I think it would be proper to say that I have always advised my clients to take no action which could affect a person's job or reputation based upon rumor or hearsay. I feel there is no justification for any dissatisfaction by a board member. The employees being investigated were invited to a meeting before the board; most appeared with counsel; board members participated in the questioning; and the board drew its own conclusions. The dissatisfaction most often expressed to me is that we were too concerned with protecting the rights of those accused.

4. Your response to the Committee questionnaire indicates that you have tried to verdict or judgment approximately 14 cases in the past three years. The response also indicates that about 14% of your court appearances in the last three years have been in federal court.

(A) Did any of your appearances in federal court in the past three years involve the trial of cases to verdict or judgment? If so, please identify the case or cases by caption, give the name, address and phone number of principal co-counsel (if any) and principal opposing counsel, and describe briefly the nature of the case.

(B) If your recent federal court appearances did not involve trial to verdict or judgment, please identify by caption the three most significant federal cases in which you have been involved in the past three years, and describe briefly the nature of the case and your role in it. Please provide the name, address, and phone number of principal co-counsel (if any) and principal opposing counsel in these cases.

(C) If not identified in the response to (A) above, please identify by caption the case you most recently tried to verdict or judgment in federal court, describe briefly the nature of the case, provide the approximate date of trial, and provide the name, address and telephone number of principal co-counsel (if any) and principal opposing counsel in the case.

A: Yes. The case of General Electric Credit v. The First National Bank of Gillette, C 87 O 102-B, was tried in October of 1987.

I was the chief counsel in this case and did all work until the trial. In September of 1987, opposing counsel indicated to me the fact that he and his client would be uncomfortable if I were to try the case as my nomination to the United States Court of Appeals had been publically announced. I visited with the United States District Court Judge and my client and at the last minute I asked my partner Dan R. Price II to try the case for me, which he did.

Opposing counsel was Mr. Gary Scott of Hearst and Applegate, P.O. Box 1083, Cheyenne, Wyoming, 82003. His telephone number is (307) 632-0541.

The case involved a claimed liability under a letter of credit. The bank issued its letter of credit in the amount of $300,000. The bank defended, claiming non-compliance with the terms of the letter of credit. As of this date the District Judge has not entered his decision.

B. EXXON v. Davis, et al.: This case was brought seeking to condemn access to a U.S. oil and gas lease across my clients' lands. I represented the defendants Davis and the defendants Lindsay. I had no co-counsel. After a hearing contesting the right to condemn, it was subsequently settled. Opposing counsel was Mr. Brent Kuntz of Hathaway, Speight and Kuntz, P.O. Box 1208, Cheyenne, Wyoming, 82003. Telephone (307) 634-7723.

Dickey v. B & N Railroad: This was a suit by an employee who was required to give a urine sample because of suspected drug use. I represented the plaintiff, who had clearly been wronged by the railraod. The case was filed in state court and transferred to the U.S. District Court. It was dismissed upon the defendant's motion to dismiss. I was assisted by Michael Patchen, an associate of our firm.

Opposing counsel was Mr. George Powers of Godfrey & Sundahl, P.O. Box 328, Cheyenne, Wyoming 82003. Telephone (307) 632-6921.

My role was primarily that of drafting the pleadings, appearing with, and supervising Mr. Patchen.

Schlosser v. Pierce: This was a case involving ownership of various bentonite claims. I tried this case on June 30, 1982, and judgment was entered on September 9, 1982.

I did all work for the defendant Pierce, including the trial. I was assisted by Mr. Schermetzler, then of my office. After trial, the case was decided in favor of my client. Opposing counsel was Mr. Mark Hughes of Sundance, Wyoming. Telephone number is (307) 238-1313.

Reliance Electric Company v. Tree: This case was filed in state court and transfered to the U.S. District court. This case was filed in December of 1984.

The case involved the ownership of the name "Tree Electric." I represented the plaintiff. Opposing counsel was Walter Urbigkit, now a Justice on the Supreme Court of Wyoming, living in Cheyenne. This case was settled in 1985. My client retained all rights to the name. I was not assisted and had no co-counsel.

Wade Brorby

Wade Brorby

January 27, 1987

ADDITIONAL QUESTION FOR WADE BRORBY

Q: According to you questionnaire response, you belong to some organizations that restrict membership to men. Do you believe that your continued membership in these organizations is consistent with the ethical standards applicable to federal judges, which state that it is inapropriate for a judge to belong to an organization that practices "invidious discrimination"? If so, please give the reasons for your conclusion that membership in these organizations is consistent with this ethical standard.

A: The organizations listed are Masonic organizations. Quite frankly I have mixed feelings concerning the answer. There is no doubt in my mind that these organizations do not practice "invidious discrimination." On the other hand a judge is obligated to avoid the appearance of impropriety. It seems to me the better course of action is to resolve the question by resigning those memberships. A judge should go the "extra mile", as painful as it may be, to avoid the appearance of impropriety, even though no actual impropriety exists.

Wade Brorby

Wade Brorby

QUESTIONS FOR SENATOR THURMOND

Q: Mr. Brorby, are there ever any circumstances under which you would consider it appropriate to decide a case on some basis other that one where the intent of the Framers of Legislation or constitutional provisions can be detected, either through the text of a provision or its surrounding legislative history?

A: I can imagine no case where it would be appropriate to decide a case on some basis other than one where the intent of the Framers of Legislation or constitutional provisions can be detected, either through the text of a provision or the surrounding legislative history.

Q: Mr. Brorby, Thomas Jefferson remarked shortly after the Ratification of the Constitution that "Our nation's particular security is the possession of a written Constitution. Let us not make it a blank paper by construction." Mr. Brorby, what do you think he meant by that warning: "Let us not make it a blank paper by construction"?

A: I believe Thomas Jefferson meant the Constitution must be faithfully followed and if it is to be amended, it must be amended in accordance with the provisions contained in Article V. If the Constitution is to be amended by construction, then we have only a document as valuable as a blank paper and none of our rights will be secure. In short, the Constitution is the foundation of our country. It is vital that it not be amended by construction.

Wade Brorby

Wade Brorby

Senator HEFLIN. The hearing will come to order.

Mr. Niemeyer, if you will come forward, we will be delighted to see you. Would you like to introduce members of your family or friends that are with you?

TESTIMONY OF PAUL V. NIEMEYER, BALTIMORE, MD, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

Mr. NIEMEYER. I would, Mr. Chairman. I have with me my son, Peter, who is 15, a sophomore in high school. I have with me my son, Christopher, who is in the sixth grade, and my wife, Susan. And I have two supporters, who are good, close friends, Mr. and Mrs. James Blackburn, and my secretary is here, JoAnn Maxwell. Also I would like to acknowledge Alan Swirski's presence and support. All the support I can get is welcome but that is it. My third son, Jonathan, is a sophomore at Dartmouth College and could not be here.

Senator HEFLIN. Well, thank you, sir.

You have been described by a number of your colleagues as the father of the Revised Maryland Rules of Procedure. Would you please describe for the committee the nature of your work in fathering those rules?

Mr. NIEMEYER. It started out, Mr. Chairman, as a reorganization of some rules that were fairly poorly organized, and at the request of the Court of Appeals of Maryland, our highest court, they asked that all the glitches and the problems and inconsistencies in the rules be fixed.

And so we set out on long-term project which began over 10 years ago to restructure, rewrite, and develop new rules for Maryland. It is not finished, but the first phase is finished and most of the main procedural tools are in place.

It involved many, many meetings, subcommittee meetings and whole committee meetings over those years.

Senator HEFLIN. Well, I have an appreciation for you. I was involved in a process many years ago of changing from common law pleading into the new rules of procedure, so I can realize the type of work you are doing, and it is certainly a part of pro bono to improve the process of justice.

You have been a trial lawyer for over 20 years. I understand that during that time virtually all of your work has been in civil cases, although you did try a few criminal cases by court appointment.

What exactly was the nature of the criminal cases you tried, and what is the extent of your experience with criminal law?

Mr. NIEMEYER. With respect to the appointments, I had numerous small cases, the facts of which were basically breaking and entering and that type of thing during periods of crisis in Baltimore.

I remember, in particular, one Federal court appointment in which my client was involved in a drug purchase, and I did commit quite a bit of time to the representation of my client in that case. But as you point out, my career has not been devoted to the criminal side. It has been devoted more to the civil side.

I did get involved in working with the criminal rules when we did the rules project and I think I am aware generally of some of the major problems. Also I have already had the privilege of attending the Federal Judicial Center's orientation for prospective new judges and learned how much more there is to learn, and I am in the process of doing that and expect to continue doing that on an intensive basis.

Senator **Heflin**. Do you view your lack of criminal law experience as an impediment to your assuming the duties of a Federal judge?

Mr. **Niemeyer**. I think if I follow through and do the study that I plan to do, I do not think it will constitute an impediment.

Senator **Heflin**. As a Federal judge, you will be called on to make many important decisions about the lives of individuals. One of the most important of those will be sentencing an individual convicted of a crime.

When the first convicted defendant comes before you for sentencing, how are you going to make that important decision? What things within you, not only as a lawyer but as a person, will you call upon to make that judgment?

Mr. **Niemeyer**. I have not had that experience yet and so I have to project myself a little bit. I am aware of the new sentencing guidelines, and obviously that would be a starting point.

But with respect to the sentencing itself, I think the idea would be to look at the crime for which the defendant was convicted and to match the sentence to the crime and the damage to society.

Senator **Heflin**. Among the cases you have identified as the most significant cases of your career is a case brought by the Maryland Attorney Grievance Commission against Joel Hyatt, founder of a chain of law offices called Hyatt Legal Services. You represented Mr. Hyatt in that case, in which he was charged with engaging in misleading advertising.

The charges against Mr. Hyatt were ultimately dismissed because it was found that Mr. Hyatt was not licensed to practice law in Maryland, thus not subject to attorney discipline there.

I would be interested to know, however, what your own views are on the propriety and utility of attorney advertising in providing legal services to those who need them without commenting on any particular case.

Mr. **Niemeyer**. In that case, advertising was an integral part of the program that the Hyatt Legal Services had set up and it was very important to preserve that right which had been given by *Bates* v. *Arizona*, the Supreme Court case which opened the way for lawyer advertising.

Consequently, it was important that the right to advertise be preserved in Maryland. There was a question as to the scope and nature of advertising that was permissible as raised by that case.

Senator **Heflin**. Does Senator Thurmond have any questions?

Mr. **Short**. Just to respond to in writing.

Senator **Heflin**. All right. You may have some questions to respond to in writing. If so, we ask you to promptly do it. We do not want to cause any delay in the process. Thank you very much.

Mr. **Niemeyer**. Thank you, Mr. Chairman.

[Answers of Mr. Niemeyer to written questions follow:]

QUESTIONS FROM STROM THURMOND FOR PAUL V. NIEMEYER, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

IN CONNECTION WITH THE INTRODUCTION TODAY OF MY FAMILY AND FRIENDS, I WOULD LIKE TO ADD TO MY TESTIMONY THAT MY THIRD SON, JONATHAN, IS A SOPHOMORE AT DARTMOUTH COLLEGE AND COULD NOT BE HERE. ALSO I WOULD LIKE TO ACKNOWLEDGE ALAN SWIRSKI'S PRESENCE AND SUPPORT.

THE FOLLOWING ARE MY RESPONSES TO THE COMMITTEE'S FURTHER QUESTIONS.

1. MR. NIEMEYER, ARE THERE EVER ANY CIRCUMSTANCES UNDER WHICH A JUDGE SHOULD ATTEMPT TO DECIDE A CASE ON SOME BASIS OTHER THAN ONE WHERE THE INTENT OF THE FRAMERS OF LEGISLATION OR CONSTITUTIONAL PROVISIONS CAN BE DETECTED EITHER THROUGH THE TEXT OF A PROVISION OR ITS SURROUNDING LEGISLATIVE HISTORY?

ANSWER: WHEN A DECISION IN A CASE IS CONTROLLED BY LEGISLATION OR A CONSTITUTIONAL PROVISION, THE INTERPRETATION OF THAT LEGISLATION OR CONSTITUTIONAL PROVISION SHOULD BE CONSISTENT WITH THE INTENT OF THE FRAMERS, AND NOT THE PERSONAL WISHES OR VIEWS OF THE JUDGE MAKING THE DECISION. IF, HOWEVER, A HIGHER COURT HAS PREVIOUSLY INTERPRETED THE PROVISION, AND THE DECISION OF THE HIGHER COURT IS BINDING ON THE JUDGE, UNDER THE DOCTRINE OF STARE DECISIS, THE JUDGE SHOULD FOLLOW THE DECISION OF THE HIGHER COURT. IF THAT DECISION INTERPRETS THE LEGISLATION OR CONSTITUTIONAL PROVISION DIFFERENTLY FROM THAT WHICH THE JUDGE

BELIEVES TO BE THE INTENT OF THE FRAMERS, I BELIEVE HE SHOULD EXPRESS HIS VIEW EVEN THOUGH HIS DECISION WILL BE GOVERNED BY THE BINDING PRECEDENT.

2. MR. NIEMEYER, ONE OF THE CRITICISMS OF JUDICIAL ACTIVISM IS A TENDENCY BY THE JUDICIARY TO EMPLOY THE INDIVIDUAL PLAINTIFF AS A VEHICLE FOR THE IMPOSITION OF FAR-REACHING ORDERS EXTENDING TO BROAD CLASSES OF INDIVIDUALS. DO YOU FEEL THAT THIS CRITICISM IS VALID, AND WOULD YOU PLEASE EXPLAIN YOUR ANSWER?

ANSWER: THAT CRITICISM IS VALID WHEN A JUDGE LOOKS BEYOND THE PARTIES AND DISPUTE BEFORE HIM AND, RATHER THAN DECIDING THE IMMEDIATE DISPUTE, BROADENS HIS ORDERS OR PRECEDENT TO EFFECT HIS RESULT ON PERSONS NOT BEFORE HIM. THE DISTINCTION BETWEEN JUDICIAL RESOLUTION AND LEGISLATION IS THAT THE FORMER RESOLVES THE IMMEDIATE GOOD FAITH DISPUTES OF THE PARTIES WHEREAS THE LATER MAY RESOLVE A DISPUTE OR IMPOSE A STANDARD ON SOCIETY OR A SMALLER CLASS OF PERSONS. TO THE EXTENT THAT A JUDGE SEEKS TO IMPACT A GROUP BEYOND THE LITIGANTS, HE IS DISTORTING THE JUDICIAL FUNCTION. EVEN THE CLASS ACTION PROCEDURE SHOULD BE VIEWED AS A PROCEDURAL DEVICE TO RESOLVE A MULTIPLICITY OF GOOD FAITH DISPUTES SIMULTANEOUSLY. TO THE EXTENT THAT IT RESOLVES CLAIMS NOT BROUGHT BY ACTUAL LITIGANTS, THE PROCEDURE IS PROPERLY CRITICIZED.

Paul Niemeyer

PAUL V. NIEMEYER

Senator **Heflin**. Mr. Arcara, if you will come forward, would you like to introduce members of your family or friends that are with you?

TESTIMONY OF RICHARD J. ARCARA, BUFFALO, NY, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

Mr. **Arcara**. I would be so honored. Thank you, Mr. Chairman. I have my wife here, Gwen. My mother was hoping to come, but after 3 months of the Buffalo winter, she took a vacation to Hawaii and it was kind of difficult for her to make it here today, sir.

Senator **Heflin**. Well, if Buffalo weather is anything like Washington weather, I understand it as a southerner.

I understand that in the course of your work as district attorney you had the privilege of representing your State in an argument before the U.S. Supreme Court in the case of *New York* v. *Uplinger*. The case is somewhat interesting because in it you were arguing in favor of the constitutionality of a State statute which prohibited people from loitering for the purpose of soliciting certain types of sexual behavior.

However, in the same case the attorney general of your State filed a brief arguing against the constitutionality of that statute. Would you explain how the case developed as it did?

Mr. **Arcara**. Yes, Mr. Chairman. That case did involve the New York State loitering statute which prohibited loitering or remaining in a public place for soliciting what was described as deviant sexual activities.

It was decided by the New York Court of Appeals that since *Uplinger* involved acts that were in anticipation of sodomy between consenting adults, and since they had ruled a couple of years earlier that sodomy was not against the laws of the State of New York and they considered this a companion case, that these anticipatory acts are likewise not illegal.

It was a two-page memorandum decision by the court of appeals. It was quite difficult to understand the court's reasoning. There was a lengthy dissent in that case dealing with the whole question of first amendment considerations.

I felt that the court of appeals was wrong. We petitioned for certiorari. Cert was granted and it was ultimately decided by the Supreme Court that cert had been improvidently granted because the court could not determine on what Federal constitutional basis the court of appeals relied in its decision as there could also have been adequate State grounds.

The Attorney General of the State of New York did take a position contrary to mine. I was quite surprised. I was totally unaware that he was going to take a position. He did not participate at all at the State level and it was not until the very last day on which the respondents could file a brief with the U.S. Supreme Court that he filed the brief in opposition to the position that we had taken.

He never discussed it with me, and furthermore he was not involved with nor responsible for the prosecution of these types of criminal cases.

Senator **Heflin**. What lessons, if any, can you draw from this case about the kind of thorny constitutional issues you may face as a Federal judge?

Mr. **Arcara**. Well, it gave me a full appreciation, an appreciation that I do not think you can experience unless you have a chance to research, write, and prepare to give an oral argument before the Supreme Court of the United States, particularly in an area such as the first amendment.

It was an educational process for me. I put a tremendous amount of effort and energy into learning all the ramifications of the first amendment in much greater detail than I ever had an opportunity to do either in law school or in practice.

So I learned from that experience to have a greater appreciation for the first amendment than I ever had before, sir.

Senator **Heflin**. As you know, a good trial judge must be able to deal fairly and effectively with many kinds of people. The same is certainly but not always true for prosecuting attorneys.

In your role as U.S. attorney and as district attorney, do you think you yourself have been successful in dealing with the different members of your constituency, young and old, rich and poor, black and white, your employees, and also your adversaries?

Mr. **Arcara**. I believe I have, sir. As a U.S. attorney and as an assistant U.S. attorney, I was very active in trying cases. I was primarily involved with the Federal agencies. I did not come into contact with the public to the degree that I did once I became district attorney.

When I became district attorney, over 6 years ago, it was a tremendous lesson for me. It brought me down from, you might say, the ivory tower right down to the level of the people.

In becoming an elected official, I went out for many months to meet people and to learn firsthand what the issues and the concerns of the people were—I think that gave me a wealth of knowledge and experience that was very helpful when I became district attorney.

As you are aware, Mr. Chairman, when you are dealing with matters as a district attorney, you are dealing with violent crimes, you are dealing with victims, you are dealing with many special interest groups and many concerns that you do not otherwise personally deal with. In the U.S. attorney's office you are somewhat insulated from these concerns.

I learned a great deal. I listened to people and I learned their concerns, and I tried, in performing my duties as district attorney, to be sensitive to those concerns, to the victims of crime, and to the rights of individuals.

I am a firm believer in the pronouncement of the Supreme Court in the 1930s that the job of a prosecutor is not just to convict, but to see that justice is done, and I have tried to the best of my ability to follow that principle.

Senator **Heflin**. One of the most difficult tasks judges face is dealing with the demands of the media for information in sensitive criminal cases. As a prosecutor, this is an issue that you have already had to confront. I raise it now because a number of concerns have been raised with the committee about your office's handling of secret grand jury information.

It has been suggested that you have not been as vigilant as you might in preventing your assistants from disclosing such information. Could you tell us what steps you have taken within your office to prevent grand jury leaks?

Mr. ARCARA. Sir, I am very sensitive to grand jury leaks. It is a problem that is of a great concern to me. When I first became district attorney and throughout the time that I was U.S. attorney, it was a high priority concern of mine that we not disclose, under any circumstances, any matters appearing before the grand jury.

There is no evidence that I am aware of that would indicate that my office or any of my assistants or I ever leaked grand jury information. And, as you are aware Mr. Chairman, witnesses are free to talk to the media, lawyers are free to talk to the media, and various other people can talk to the media.

It is very difficult today, with a very watchful media, to totally eliminate leaks because there are so many avenues available to the media to obtain the information. I have no control over the witnesses that I have no control over attorneys who have witnesses who appear before the grand jury.

That allegation was made. I challenged the people who made those allegations to come forth with any evidence at all so that I could meet this head-on because it is outrageous. One of the most important institutions we have in the criminal justice system is the grand jury proceeding and the secrecy of those proceedings, not only so that we can procure the evidence, but also to protect the innocent in the grand jury proceeding.

When that information gets out, many times it damages people unfairly and I am very sensitive to the stigma that can be attached to that, sir. I have made an effort to do everything within my power to teach my people about this problem. We constantly address it, we constantly are aware of it, and we have made every effort humanly possible to deal with this matter. I do not know what more I could do, sir.

Senator HEFLIN. Thank you, sir.

Does Senator Thurmond have any questions?

Mr. SHORT. Just to respond to in writing.

Senator HEFLIN. He will respond to them in writing.

There will be questions probably submitted to you in writing. We would appreciate your prompt expedition in answering those and delivering them back to the committee. Thank you very much.

Mr. ARCARA. Thank you, sir.

[Answers of Mr. Arcara to written questions follow:]

ADDITIONAL QUESTIONS FROM SENATOR HEFLIN FOR RICHARD L. ARCARA OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

1. IN THE COURSE OF YOUR WORK BOTH AS UNITED STATES ATTORNEY AND AS DISTRICT ATTORNEY IN BUFFALO, YOU HAVE HAD TO MAKE DECISIONS ABOUT WHETHER TO PROSECUTE INDIVIDUALS ACCUSED OF WELFARE FRAUD. RECENTLY, CONCERNS WERE RAISED PUBLICALLY THAT YOUR OFFICE HAS HAD A POLICY OF LENIENT TREATMENT FOR INDIVIDUALS WHO QUICKLY REPAY WELFARE MONEY THEY HAVE TAKEN IMPROPERLY, BUT VIGOROUS PROSECUTION OF THOSE UNABLE TO REPAY THE FUNDS. YOU HAVE DENIED FOLLOWING ANY SUCH POLICY, BUT COULD YOU PLEASE EXPLAIN WHAT POLICY YOUR OFFICE HAS FOLLOWED IN DEALING WITH CASES OF WELFARE FRAUD? WHAT FACTORS DO YOU CONSIDER IN DECIDING WHETHER TO DROP THE CHARGES, ENTER INTO A PLEA AGREEMENT FOR A LESSER OFFENSE, OR PROCEED TO PROSECUTION? DO YOU CONSIDER RESTITUTION AS A MITIGATING FACTOR?

ANSWER: THE PRESENT POLICY OF MY OFFICE IN PROSECUTING WELFARE FRAUD CASES HAS BEEN IN EFFECT FOR MORE THAN TEN YEARS. IT WAS STARTED BY MY PREDECESSOR AND HAS REMAINED ESSENTIALLY UNCHANGED. TO HELP INSURE THAT INJUSTICES WILL NOT OCCUR, I HAVE IMPROVED UPON THE INTERNAL SCREENING PROCEDURES OF THIS OFFICE SO THAT ONLY THE MORE SERIOUS CASES ARE PROSECUTED CRIMINALLY.

IN ALL CASES OF SUSPECTED WELFARE FRAUD WHERE A PLEA TO A REDUCED CHARGE IS THE APPROPRIATE DISPOSITION, THE IDENTICAL PLEA IS AVAILABLE TO ANY DEFENDANT UNDER THE SAME OR SIMILAR CIRCUMSTANCES. IN NO CASE DOES A DEFENDANT'S ABILITY TO MAKE

RESTITUTION DETERMINE WHAT PLEA, IF ANY, IS MADE AVAILABLE TO THAT DEFENDANT.

IN MY OFFICE, THERE IS ONE ASSISTANT DISTRICT ATTORNEY WHO HAS BEEN ASSIGNED TO THE INVESTIGATION AND PROSECUTION OF ALL WELFARE FRAUD CASES SINCE I BECAME DISTRICT ATTORNEY IN 1982. SHE ALSO DID SO FOR THE PRIOR TWO YEARS. THIS EXPERIENCED ASSISTANT DISTRICT ATTORNEY DETERMINES APPROPRIATE PLEA DISPOSITIONS SOLELY ON AN EVALUATION OF STANDARD CASE CRITERIA SUCH AS THE STRENGTH OF PROOF, AGGRAVATING OR MITIGATING CIRCUMSTANCES AND PRIOR CRIMINAL RECORD OF THE DEFENDANT.

IT MAY WELL BE THAT RESTITUTION IS A VALID CONSIDERATION IN THE DISCRETION OF THE SENTENCING JUDGE. IT IS TO BE NOTED THAT IN CASES INVOLVING WELFARE FRAUD, ALL RECIPIENTS MAKE RESTITUTION EITHER BY PAYMENT BEFORE SENTENCING OR BY MEANS OF SET-OFF FROM THE WELFARE ASSISTANCE WHICH THEY RECEIVE.

I CONSIDER RESTITUTION AS A MATTER FOR THE JUDGE TO CONSIDER AT THE TIME OF SENTENCING. I DO NOT CONSIDER RESTITUTION AS A MITIGATING FACTOR.

*SEE ATTACHED AFFIDAVIT OF MARGARET OLSZEWSKI SZCZUR DATED JANUARY 25, 1988 FOR FURTHER DETAILS

AFFIDAVIT

STATE OF NEW YORK:
COUNTY OF ERIE : ss.
CITY OF BUFFALO :

Margaret Olszewski Szczur, being duly sworn, deposes and says:

1. I am an attorney at law, admitted to practice in the State of New York, I am presently an Assistant District Attorney, and have been employed in the Erie County District Attorney's Office since 1978.

2. I am presently assigned to the Erie County District Attorney's Office Special Investigations/Prosecution Bureau and since March, 1980, I have been responsible for the investigation and prosecution of all cases of suspected welfare fraud.

3. As such, I am knowledgeable concerning this office's prosecution and plea policy in all such cases. Further, I personally supervise all dispositions, including trials and pleas in the lower courts, including Buffalo City Court, as well as in the superior courts.

4. The office policy in the prosecution and plea of cases involving allegations of welfare fraud is based solely upon an evaluation of standard case criteria, including the strength of proof, aggravating or mitigating circumstances and the prior criminal record of the defendant. A defendant's ability to make restitution is of no consequence in what plea, if any, is made available.

5. I have read the article written by Matt Gryta which appeared in the Buffalo News on November 7, 1987 in which former Buffalo City Court Judge Michael McCarthy and Assistant Public Defender Helen Zimmerman alleged a discriminatory practice by this office in the prosecution of welfare fraud. In the article, they alleged that a defendant's ability to make restitution is a determining factor in what plea is made available.

6. Said allegation is untrue. As referred to in paragraph 4 above, a defendant's ability to make restitution does not determine what plea, if any, is made available. That determination is based solely upon an evaluation of the aforementioned standard case criteria.

7. I am unaware of any case since March, 1980, in which the office policy in the prosecution of welfare fraud was not strictly adhered to. Further, I know of no case where restitution was a determining factor in its disposition.

Margaret Olszewski Szczur

MARGARET OLSZEWSKI SZCZUR

Sworn to before me this

25th day of January, 1988

[illegible]

[illegible] New York

[illegible] March 30, 19[illegible]

2. TO THE BEST OF YOUR RECOLLECTION, WHAT WAS THE FULL EXTENT OF YOUR INVOLVEMENT IN OBTAINING AUTHORIZATION FOR A WIRETAP ON THE PHONE OF JACK D. LIFFITON IN MAY OF 1982 AND OR OBTAINING AN EXTENSION OF THAT AUTHORIZATION? ON THE BASIS OF WHAT INFORMATION DID YOU BASE YOUR APPLICATION FOR THE WIRETAP? WERE YOU AWARE OF THE IDENTITY OF ANY INFORMANTS UPON WHICH THE APPLICATION WAS BASED?

ANSWER: TO THE BEST OF MY RECOLLECTION MY OWN INVOLVEMENT IN OBTAINING AUTHORIZATION FOR A WIRETAP ON THE TELEPHONE OF JACK D. LIFFITON IN MAY OF 1982 AND FOR OBTAINING AN EXTENSION OF THAT AUTHORIZATION, WAS TO REVIEW THE APPLICATIONS, SUPPORTING AFFIDIVITS AND PROPOSED ORDERS TO DETERMINE WHETHER THEY WERE LEGALLY SUFFICIENT. I VAGUELY RECALL THAT MY CHIEF OF SPECIAL INVESTIGATIONS UNIT, GEORGE QUINLAN, AND NEW YORK STATE TROOPER HENRY WILLIAMS, PRESENTED THE AFOREMENTIONED DOCUMENTS TO ME FOR APPROVAL.

ALTHOUGH I DO NOT HAVE A CLEAR RECOLLECTION OF THE SPECIFIC CIRCUMSTANCES OF THIS PARTICULAR APPLICATION, IT WOULD HAVE BEEN MY USUAL PROCEDURE TO BASE MY APPROVAL OF THE APPLICATION FOR THE WIRETAP ON THE INFORMATION THAT WAS CONTAINED WITHIN THOSE DOCUMENTS. I'M SURE THAT THERE WAS A DISCUSSION RELATIVE TO THE INVESTIGATION BUT I SIMPLY SO NOT RECALL WHAT WAS SAID AT THE TIME.

I WAS NOT AWARE OF THE IDENTITY OF ANY INFORMANTS UPON WHICH THE APPLICATION WAS BASED. IT WAS MY PRACTICE AS UNITED STATES ATTORNEY AND IT CONTINUES TO BE MY PRACTICE NOT TO LEARN THE IDENTITY OF INFORMANTS UNLESS THEY ARE OBVIOUS TO THE INVESTIGATION. I BELIEVE THAT INFORMANT IDENTITY IS BEST KEPT WITH THE INVESTIGATIVE AGENCY.

Richard J. Arcara

RICHARD L. ARCARA

QUESTIONS FROM SENATOR THURMOND FOR RICHARD L. ARCARA OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

1. MR. ARCARA, HOW DOES A RESPONSIBLE JUDGE GO ABOUT THE PROCESS OF INTERPRETING SUCH SEEMINGLY OPEN-ENDED CONSTITUTIONAL PROVISIONS AS THE DUE PROCESS OR EQUAL PROTECTION CLAUSES?

ANSWER: IT IS IMPORTANT FOR A JUDGE TO KEEP IN MIND THAT THE BASIC PURPOSE OF DUE PROCESS AND EQUAL PROTECTION IS TO ENSURE THAT THE LAW IS JUST AND PROTECTS THE PEOPLE WHO COME BEFORE THE COURT. DUE PROCESS MEANS THE LAW HAS TO PROVIDE AN OPPORTUNITY FOR PEOPLE TO HAVE A FAIR HEARING ON MATTERS THAT EFFECT THEIR LIVES. EQUAL PROTECTION MEANS THAT PEOPLE IN SIMILAR SITUATIONS SHOULD BE TREATED EQUALLY, WITHOUT REGARD TO THEIR RACE, COLOR, SEX, RELIGION, OR POLITICS.

THE GUARANTEES OF EQUAL PROTECTION AND DUE PROCESS ARE AMONG THE MOST FUNDAMENTAL PROTECTIONS IN THE LAW. I WILL DO EVERYTHING IN MY POWER TO BE SENSITIVE TO THESE FUNDAMENTAL PRINCIPLES.

2. MR. ARCARA, ARTICLE III, SECTION 1 OF THE CONSTITUTION INVESTS IN THE CONGRESS PLENARY POWER TO "ORDAIN AND ESTABLISH" SUCH INFERIOR COURTS AS IT SEES FIT. TO WHAT EXTENT, AS A DIRECT FUNCTION OF THAT POWER, IS CONGRESS EQUALLY EMPOWERED TO LIMIT THE JURISDICTION OF LOWER FEDERAL COURTS OVER VARIOUS CLASSES OF CASES AND CONTROVERSIES?

ANSWER: UNDER THE CONSTITUTION, CONGRESS HAS THE POWER TO DEFINE THE JURISDICTION OF LOWER COURTS, AND I BELIEVE THAT CONGRESS ALSO HAS THE POWER TO RESTRUCTURE THE JURISDICTION OF LOWER FEDERAL COURTS OVER VARIOUS CLASSES OF CASES AND CONTROVERSIES. HOWEVER, I BELIEVE THAT ANY CHANGES IN THE PRESENT SYSTEM, SUCH AS THE CURRENT PROPOSAL TO ELIMINATE FEDERAL DIVERSITY JURISDICTION, SHOULD ONLY BE UNDERTAKEN AFTER CAREFUL CONSIDERATION OF ALL THE RELEVANT FACTORS BY THE LEGISLATIVE BODIES.

I BELIEVE THAT THE ROLE OF A DISTRICT COURT JUDGE IS TO FAITHFULLY APPLY THE LAWS THAT ARE PASSED BY CONGRESS. THEREFORE, IF CONGRESS PASSES A LAW ALTERING THE JURISDICTION OF THE FEDERAL COURTS, DISTRICT COURT JUDGES MUST APPLY THAT LAW.

Richard J Arcara

RICHARD L. ARCARA

Senator **Heflin**. We will now call Ms. Conlon. Ms. Conlon, you have a seat and we are delighted to see you.

You have spent most of your legal career and most of the past decade as a prosecutor. If you are confirmed as a Federal judge, you will have to make the transition from the role of an advocate to that of an impartial decisionmaker. How have you prepared yourself to make this transition, and what aspect of your personal experience best indicates that you will make it successfully?

TESTIMONY OF SUZANNE B. CONLON, CHICAGO, IL, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Ms. **Conlon**. I think the transition from a prosecutor to a judge is a very important and significant one. It is a transition I am very sensitive to, having been a trial lawyer for so long.

In the past 2 years I have had the opportunity and the challenge of working with every segment of the criminal justice community. I have worked with not only judges and probation officers, but the defense bar as well, and have been a regular attendee at Federal defender programs in connection with my work at the Sentencing Commission.

So I think in the past 2 years I have become far more sensitized to the views of different segments of the criminal justice community. I think it is very important that a judge not be an advocate, that a judge not be a partisan in the courtroom, and be a fair and impartial monitor and governor of a trial, and I think I am prepared to do that.

Senator **Heflin**. Your questionnaire response indicates that a large percentage of your practice has been in the field of criminal law, maybe 90 percent. Of course, a large segment of the Federal court docket consists of civil case and a Federal court in a metropolitan center like Chicago gets more than its share of highly complex civil litigation.

Please describe your civil litigation experience and tell us how you will face the challenge of managing complex civil litigation.

Ms. **Conlon**. Mr. Chairman, early in my career I was very fortunate to clerk for the then chief judge of the court for which I have been nominated. That judge, Judge Edwin Robson, was on the original panel for multi-district litigation. In that connection, I worked for him for 2 years on complex and protracted litigation, usually class action suits involving securities, antitrust, air crash litigation, cases that had been filed in a number of districts throughout the country.

So early in my career I had significant exposure to complex civil litigation. At the same time, I taught in those areas at DePaul Law School until I, too, became a trial lawyer and could no longer pursue teaching.

Over the years I have continued to be active in the Federal Civil Procedure Committee of the Chicago Bar and 3 years ago was appointed to chair their Federal Practice Subcommittee, their Federal trial bar. That subcommittee monitors entry requirements for attorneys to the trial bar which is in place in the Northern District of Illinois.

I recognize I am far from an expert in any field of civil litigation, but I do not necessarily view that as a handicap. I think anyone going on the bench cannot afford to view himself or herself as an expert, but must approach each case with a fresh mind, a willingness to work, and an ability to learn from counsel and from the judge's own staff and the judge's own hard work what the discreet facts of a case are and how to apply the law fairly in that case.

Senator HEFLIN. At Senator Simon's request, your nomination was reviewed by a committee of the Chicago Council of Lawyers. They conducted a number of interviews and reviewed samples of your written work.

The Chicago Council came to the following conclusion:

> The Council bases its conclusion concerning Ms. Conlon on the reports of lawyers and judges who have seen Ms. Conlon practice law. In summary, while she is viewed as personable, honest and competent, she is not viewed as having demonstrated exceptional intellectual or legal abilities.
>
> In our view, the demands placed upon a Federal district court judge require that we select our very best lawyers for this demanding job. Although Ms. Conlon, like many other assistant U.S. attorneys, has served the public well, we believe that she has not yet distinguished herself sufficiently to merit appointment to the Federal district court.

Are you familiar with the evaluation of your nomination which the Chicago Council of Lawyers provided to Senator Simon?

Ms. CONLON. Yes. I was furnished a copy of that letter, Mr. Chairman.

[Aforementioned letter follows:]

Chicago Council of Lawyers

One Quincy Court Building • Suite 800 • 220 South State Street • Chicago, Illinois 60604 • (312) 427-0710

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Executive Director

May 4, 1987

Senator Paul M. Simon
462 Dirksen Senate Building
Washington, D.C. 20510

Dear Senator Simon:

Pursuant to your request, the Chicago Council of Lawyers has evaluated the qualifications of Suzanne B. Conlon for appointment as a judge on the United States District Court for the Northern District of Illinois. The Council's evaluation of Ms. Conlon consisted of interviewing lawyers with whom and against whom she has practiced, interviewing judges before whom she has practiced, interviewing people who have worked with her at the United States Sentencing Commission, reviewing examples of her written work, and conducting an interview with her.

As we have stated in previous letters to you regarding other candidates for the federal district court, the standard by which the Council evaluates such candidates is as follows:

> The Council believes that candidates for the federal district court should be persons of the highest integrity who have demonstrated superior intellectual ability and excellence in legal practice, preferably in the context of federal litigation and trial experience.

The Council's standard is a high one and its application to candidates for the federal bench may result in finding many competent and able practitioners "unqualified" because they do not meet the standard of excellence necessary for one who seeks the extremely demanding job of federal district court judge. The Council concludes that Ms. Conlon does not meet this high standard and that she is therefore not qualified to be a federal district court judge.

Ms. Conlon graduated cum laude from the Loyola University School of Law in 1968 where she was a member of the board of editors of the law review. She then clerked for Judge Edwin A. Robson of the United States District Court for the Northern District of Illinois from June of 1968 to March of 1972. From 1972 to 1973 she was an associate at the Chicago law firm of Pattishall McAuliffe & Hoffstettler, and from 1973 to 1977 she was an associate at the Chicago law firm of Schiff Hardin & Waite. In 1977, she joined the United States Attorney's Office in Chicago, where she remained until 1978 when she moved to Los Angeles to become Assistant Chief of the Criminal Division and Chief of Criminal Appeals in the United States Attorney's Office in Los Angeles. In 1982, she returned to the United States Attorney's Office in Chicago where she was Economic Crime Enforcement Coordinator. In May of 1986, Ms. Conlon began work for the United States Sentencing Commission as Deputy General Counsel. She became Executive Director of the Sentencing Commission in October of 1986, the position that she now occupies.

Ms. Conlon receives high marks for honesty and integrity from the lawyers who have practiced with and against her. The defense lawyers we interviewed thought that she was fair, reasonable, and completely above-board in the prosecutions that she handled. Although Ms. Conlon is viewed by the bench and bar as a competent lawyer, she is not viewed by her colleagues and supervisors as having excelled. Few of the lawyers whom we interviewed thought that she was an outstanding candidate or that she was among the group of attorneys in Chicago most qualified to be a federal district court judge. Few predicted that she had the capabilities to serve with distinction.

The Council has also attempted to assess Ms. Conlon's work at the Sentencing Commission. This has been a difficult task given the fact that there is heated disagreement among present and former staff members, as well as among some of the Commissioners, over whether the Commission has functioned effectively and whether it has produced a credible product. The Council received both very positive and very negative reports concerning Ms. Conlon's work at the Sentencing Commission. The interviewees who were positive about Ms. Conlon's work commended her for her ability to get the Commission's work done under tight time deadlines and in the face of considerable staff disagreement over the substance of the Commission's work. Those who made negative comments about Ms. Conlon's work at the Sentencing Commission felt that she was not qualified by way of background in sentencing law and policy to be Executive Director of the Commission and that her policies and practices were responsible for the fact that some of the most knowledgeable staff members left the Commission. Her critics also questioned her intellectual abilities. The Council is unable to decide whether Ms. Conlon has performed well in the position of Executive Director of the Sentencing Commission because it does not have adequate access to the people and information necessary to make an informed judgment on that subject. The Council notes only that there is wide disagreement among those with whom she has worked at the Sentencing Commission as to the quality of her work and as to her capabilities. The Senate Judiciary Committee may be better situated than is the Council to reach a final decision on this issue.

The Council thus bases its conclusion concerning Ms. Conlon on the reports of lawyers and judges who have seen Ms. Conlon practice law. In summary, while she is viewed as personable, honest, and competent, she is not viewed as having demonstrated exceptional intellectual or legal abilities. In our view, the demands placed upon a federal district court judge require that we select our very best lawyers for this demanding job. Although Ms. Conlon, like many other Assistant United States Attorneys, has served the public well, we believe that she has not yet distinguished herself sufficiently to merit appointment to the federal district court.

Very truly yours,

Thomas F. Geraghty
Chairman
Federal Judicial
Evaluation Committee

TFG:pv

cc: Suzanne B. Conlon
Deborah Leavi

Senator HEFLIN. How do you respond to the argument that your professional abilities do not measure up to the high standard expected for nominees to the Federal court? What accomplishments in your career would you point to to refute this argument?

Ms. CONLON. Mr. Chairman, I think I would point to my 10 years of active litigation experience. I was assigned far more complex cases as time went by. I had supervisory authority and responsibility over other prosecutors, evaluating their work.

I did receive a commendation from a former Attorney General for trial work I did in two significant cases of public interest. I have continued my writing through the years both as chief of appeals—and I have continued handling appeals for my own cases, which in the Chicago U.S. Attorney's office was an option, both because I like to write and because I like to pursue legal issues. I have continued to write. I would submit that in response to that evaluation.

Senator HEFLIN. The American Bar Association Standing Committee on the Federal Judiciary also reviewed your nomination, as with every other district court nomination. A majority of the American Bar Association committee rated you qualified for this post, but a minority thought you were not qualified.

Do you know why a minority of the ABA committee reached that conclusion?

Ms. CONLON. No, Mr. Chairman. Unlike the Chicago Council, I was not provided any information.

Senator HEFLIN. I might say that in supporting your nomination, however, the Chicago Bar Association, the Illinois Bar Association, and the Federal Bar Association have endorsed your nomination and found you qualified.

I understand that your first position at the Sentencing Commission was deputy general counsel, but that within a few months you were assigned the position of executive director. You served in that capacity until a few weeks ago.

What were your principal duties in the position of executive director? Were you directly involved in the substantive work of drafting sentencing guidelines or was this primarily a managerial post?

Ms. CONLON. It was a mix, Mr. Chairman. When I became executive director, the Commission was preparing to publish its first draft of guidelines in September, or had just published them in September of 1986.

The Commission is a very active—as I am sure members of this committee are aware, a very active agency in this city and it is a very project-oriented agency. My initial responsibility was to coordinate drafting and redrafting of guidelines which, to a large extent, were experimental during that period of time.

After the first publication, we received thousands of letters, position papers, and other forms of public comment. We had six public hearings throughout the country in the fall of 1986.

My principal responsibility was to coordinate all of those efforts, to assign out work to the staff, to communicate the policy decisions made by the commissioners themselves, who were very active in the process, back to the staff, and to circulate drafts after they had been revised according to the commissioners' policy decisions.

My role would change as the emphasis changed. After the January publication, we went into a period of testing and my primary responsibility during the spring was staff testing of draft guidelines and making recommendations where we found substantial problems.

Over the summer after we submitted the guidelines to Congress, I basically engaged in some of the same work with probation officers throughout the country. We tested at ten sites throughout the country, and this fall training has been my major emphasis. I have worked with groups of judges, with probation officers, Federal defenders, and at the Department of Justice, so that the criminal justice community would be familiar with the guidelines before they became effective.

Senator **Heflin**. Your position at the Sentencing Commission was certainly a challenging one. There were sharp disagreements among the commissioners as to the shape the sentencing guidelines should take. There were short deadlines. One commissioner described the scene as a war zone.

Some commissioners and staff feel that you did an excellent job under these trying circumstances. Others are critical of your performance. Can you suggest an explanation for these sharply divergent evaluations of your performance?

Ms. **Conlon**. Mr. Chairman, I do not think there has been an agency in Washington with the workload that the staff has had at the Commission this past year. It has been a situation where much was asked of the staff and much was given.

For the most part, people seemed to work well under stress and I think the fact that we produced three discreet forms of guidelines and published them in the Federal Register in 8 months says a lot for the ability of the staff to work together and the ability of the commissioners to work with the staff.

There were sharp divisions of opinion, but for the most part once those issues were thrashed out, we worked together. Not all people work well under stress, and unfortunately sometimes there are casualties in the process.

I think what the process has taught me is that administration and personnel are very sensitive matters that have to be carefully handled. Unfortunately, we were so busy reaching our statutory mandate and filing guidelines, we did not always give enough consideration, I do not think, to some personnel problems.

That is not to say I think we were objectively unfair, but subjectively I think it is important that when employees have a problem they receive the kind of time and attention they require.

After we sent the guidelines to Congress in April, I formally recommended to the Commission that we hire a professional personnel expert, and indeed we had detailed to the Commission from the Administrative Office for U.S. Courts a professional personnel expert for approximately a month and she developed a merit pay system and some very basic systemic personnel matters that we just had not had time to delve into before then.

Senator **Heflin**. As executive director, you had responsibility to all the commissioners regardless of their views on the substantive sentencing guideline issues that sometimes divide the Commission.

In some situations you were called upon to exercise the maximum degree of fairness, objectivity and tact in carrying out your duties. From your perspective, how did you manage the sometimes conflicting demands that result from responsibility to a collegial body that often found itself in conflict?

Ms. CONLON. I tried to do that with great care, Mr. Chairman. It was a role that my life—it was new in my life, quite frankly. I had been a litigator and an advocate for so long, it taught me many lessons.

Fortunately, among the commissioners there were a number of people who took the time to work with me and help me with this very difficult task, but it was a very difficult task for me.

Senator HEFLIN. One Federal judge recently told this committee that the most important attribute for success on the trial bench was the ability to listen. Do you believe that your experience on the Sentencing Commission where there are sharp disagreements over many questions reflects an ability to listen to opposing viewpoints and make or recommend a decision? Can you give any particular examples of controversies in which your ability to listen to opposing sides and reach an objective conclusion was a key to success in your role as executive director?

Ms. CONLON. I agree with that Federal judge's observation about being a good listener, and being a good listener helps being a good problem-solver. Last winter, one of the biggest issues that confronted the Commission, and one that I was personally very interested in, was the problem of how to deal with plea bargaining under a sentencing guidelines system.

We received many position papers; they were in sharp conflict. Some were concerned that prosecutors would be given all the discretion transferred from sentencing judges. Others thought that it would upset the balance of the system if plea bargaining was not allowed to continue at its present rate.

I was able to bring in one of the leading Federal defenders and a young prosecutor. We had a mock demonstration for the staff on plea negotiation processes both under a guideline system and without guidelines. And we were able to sift out the common objectives, the real interests of both the defendant and the prosecutor in the plea negotiation process, and I think I was successful in sensitizing the staff and all the interested commissioners in the dynamics of the plea bargaining process.

Senator HEFLIN. Do you have some members of the family or friends here that you would like to introduce?

Ms. CONLON. Yes, Mr. Chairman. I think half the Sentencing Commission staff is here. I know John Steer, our general counsel, is here, and several members of the legal staff. I know Andy Purdy is here; Mike Zoeller, who is a law clerk with the Commission; Camille Williams; Paul Martin, our communications director; the key person on our staff for training, Rusty Burris, who is a probation officer from South Carolina. I also have an old friend from Chicago; Jack Jennings is here; Michael DeFeo. I am embarrassing myself, but I hope I am not embarrassing them, Mr. Chairman.

Senator HEFLIN. Well, thank you. If Senator Thurmond were here, I am sure we would hear a great deal on the probation system of South Carolina.

Mr. **Short**. Absolutely, no doubt about it.

Senator **Heflin**. Does Senator Thurmond have any questions?

Mr. **Short**. Just to submit in writing.

Senator **Heflin**. All right.

There probably will be some questions that will be submitted to you in writing. If so, we would appreciate an expeditious return.

[Answers of Ms. Conlon to written questions follow:]

Rec'd 1/28/88 SSr

WRITTEN ANSWERS TO QUESTIONS FOR SUZANNE B. CONLON

1. When the Sentencing Commission issued its proposed guidelines last spring, it strongly recommended that the final implementation of the guidelines be delayed for some months in order to "fine-tune" the guidelines, and to provide adequate time to train the federal judiciary in this new method of sentencing convicted defendants. Last October, when the House of Representatives was debating a bill to provide such a delay, Congressman Lungren introduced into the Congressional Record a letter from you responding to his request for information about the training program, which was carried out under your supervision. The letter concluded as follows:

> **Predicting likelihood of a successful implementation is a judgment call. In my view, there is every reason to expect that judges and probation officers will be ready and able to properly apply the guidelines when they become effective on November 1, 1987.**

Please describe the circumstances which led to your writing this letter. Second, please respond to the criticism that the quoted portion of your letter, which seems to imply that a delay in implementation of the guidelines was not necessary, was contrary to the Commission's stated position in support of a delay. Had the Commission changed its position between the time the final guidelines were issued and the time you wrote this letter?

The circumstances which led to my preparation of the letter to Congressman Lungren are set out in my attached memorandum to Commissioner Paul Robinson, dated October 10, 1987. The two Commissioners who informed me of the request were Michael Block and Ilene Nagel. To my knowledge, no Commissioner except Paul Robinson has questioned the propriety of my responding to this request.

As reflected in my memorandum to Commissioner Robinson, the Commission approved an ambitious and demanding training program designed to comply with the November 1, 1987, statutory effective date of the guidelines. It was my judgment that the Commission staff, working with staff from the Federal Judicial Center and the Administrative Office for U.S. Courts, would successfully complete that program and its objectives by November 1st. The fact that information I provided, concerning the success of the training program, may have been helpful to opponents of delay legislation cannot reasonably be viewed as a basis for claiming that I engaged in the policy debate over the delay issue.

There were on-going discussions at Commission meetings over the summer of 1987 regarding whether a delay was desirable to resolve constitutional issues and to amend the guidelines before the effective date, as well as for training purposes. Though I do not recall a vote ever being taken on this issue, I believe that during that period at least four or five Commissioners expressed opposition to a delay at Commission meetings.

2. Please respond to the following allegation that is reported in the letter of the Chicago Council of Lawyers: "Those who made negative comments about Ms. Conlon's work at the Sentencing Commission felt ... that her policies and practices were responsible for the fact that some of the most knowledgeable staff members left the Commission."

There does seem to have been rather high professional staff turnover at the Commission. Why do you think this was so? Did you have anything to do with it?

I do not know what the Council meant by "her policies and practices" or whom they meant by "some of the most knowledgeable staff members." All internal guideline assignments and deadlines were discussed with Judge Wilkins and informational memoranda concerning staff assignments were continuously circulated to the Commissioners themselves. Personnel actions and problems were discussed with both Judge Wilkins and Commissioner Corrothers (who was designated by the Commission to oversee personnel and administration matters) on a regular basis.

The professional staff I recall leaving during the period referred to by the Council were Mark Cohen, a senior research staff member who left to teach at Vanderbilt, David Tevelin, a legal staff member who left to become Executive Director of the State Justice Institute after he was recommended for that position by Judge Wilkins, and Marian Metcalf, a policy analyst on the research staff who returned to the Department of Justice.

Several lawyers were on loan to the Commission for limited periods of time: Tim Garren from the Department of Justice, Mary Ellen Abrecht from the United States Attorney's Office in the District of Columbia, and Russell Ghent, Judge Wilkins' law clerk.

I know of no employee who left the Commission because of my "practices and policies."

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3. Many federal judges initially opposed the concept of federal sentencing guidelines developed by a sentencing commission. They felt that they should retain the broad discretion in sentencing that was a hallmark of our federal courts up until this past November, when the sentencing guidelines went into effect.

You have had an important role in developing sentencing guidelines, and in training federal judges in how to apply them. If you are confirmed as a federal judge, you will be subject to the constraints of the guidelines in your sentencing decisions.

In your opinion, based on your familiarity with the guidelines and with the process of training federal court personnel to apply them, what do you think will be the major problem that federal judges will have in applying this totally new system for sentencing convicted criminals? What advice will you give your colleagues on the federal bench in grappling with that problem?

Most of the judges I have worked with over the past year and a half oppose the concept of sentencing guidelines and the decision by Congress to have guidelines. I have found that opposition is not only based upon limitations upon their sentencing discretion, but also genuine concern about the unknown effects of a perceived mechanistic, dehumanized approach to sentencing upon the criminal justice system.

I think the threshold problem is an unfamiliarity with the Sentencing Reform Act and its directives to the Sentencing Commission. An understanding of the legislation often diminishes resistance to the guidelines. I have also found that once a judge understands the flexibility built into the guidelines and the reflection of actual sentencing factors usually considered by thoughtful judges, resistance also diminishes.

If a judge finds that application of the guidelines produces an unjust result, I would advise a judge not to hesitate in departing from the guidelines, provided he or she explicitly states on the record the reason why the guideline sentence is inappropriate.

UNITED STATES SENTENCING COMMISSION
1331 Pennsylvania Avenue, NW
Suite 1400
Washington, D.C. 20004
(202) 662-8800

William W. Wilkins, Jr. Chairman
Michael K. Block
Stephen G. Breyer
Helen G. Corrothers
George E. MacKinnon
Ilene H. Nagel
Paul H. Robinson
Benjamin F. Baer (ex officio)
Ronald L. Gainer (ex officio)

MEMORANDUM

TO: Commissioner Paul H. Robinson

FROM: Suzanne B. Conlon SBC

SUBJECT: Congressional Request Regarding Training Program

DATE: October 10, 1987

Judge Wilkins has conveyed your concern regarding my response to Congressman Dan Lungren's request for information regarding the Commission's training program and its effectiveness.

Congressman Lungren apparently made the request on Thursday, October 1st. I was at the Federal Judicial Center for a meeting of all guideline training faculty that day. When I returned to the office after 6:00 p.m., two Commissioners informed me of the request and stated that the Congressman needed the information the following day. I therefore worked on the response late that night and had it typed early the next morning, as I had to return to the Federal Judicial Center at 9:00 a.m. for another full day of meetings. The letter was delivered to Congressman Lungren on Friday, October 2nd, as he requested.

I was specifically requested to provide a description of the Commission's testing and training program and my evaluation of its effectiveness. The information requested has previously been made available not only to all Commissioners but also to the Government Accounting Office on an on-going basis; in fact, five GAO staff attended our first two-day testing session with probation officers. GAO has been provided copies of our emerging worksheet, test cases, and training materials. They have questioned Commissioners and staff about the testing and training results and future training plans. GAO's report to Congress in September included comments of Commissioners that "....the testing and training efforts are proceeding very well."

I have reported to the Commission during at least one recent meeting on the success of our testing and training program and have circulated evaluation sheets completed by participants to all Commissioners.

At least a month ago, GAO asked my opinion of legislative proposals for delay in the implementation of the guidelines. I declined to comment on that issue (as I have declined frequent invitations to publicly comment on the wisdom of the Sentencing Reform Act and the merits of the guidelines themselves), but stated that the staff was working diligently to prepare for the existing November 1st effective date. During a presentation I made at an American Bar Association seminar recently, I also stated that while others debated the merits of a delay, the Commission staff did not have that luxury. It is our responsiblity to carry forward the ambitious and demanding training program approved by the Commission. That program was designed by the Federal Judicial Center and the Commission to comply with the effective date currently mandated by statute.

Over the past year we have received a number of requests from Congressional staff for information and progress reports on our work. To my knowledge, we have never refused to comply with these requests. I was not aware of any reason why Congressman Lungren's request, directed to me by two Commissioners, should be treated any differently. He did not request, nor did I offer, any personal opinion of the guidelines themselves or of pending delay legislation. I do not think I have the option, however, of refusing to comply with a Commissioner's request that I respond to a Congressman's inquiry about the nature and effectiveness of a Commission program for which I am primarily responsible.

cc: All Commissioners

QUESTIONS FROM SENATOR THURMOND

Q: Ms. Conlon, I consider judicial temperament to be a prerequisite for a federal judge. Would you give me your thoughts on this subject.

A: The qualities of judicial temperament I have come to admire over the years are fairness and professional courtesy. When a judge treats counsel and litigants in a fair and respectful manner, I have observed that these qualities are often contagious in the courtroom. Patience and self-restraint are also qualities that are essential to judicial temperament. A judge should set a tone of professionalism in the courtroom, be a good listener, yet firmly insist that counsel also treat each other in a fair and courteous manner.

Q: Ms. Conlon, we frequently hear the argument that courts act in response to various social problems because the legislature has failed to act on its own. How would you respond to this defense of an activist judiciary?

A: The jurisdiction of federal judges is defined and limited by the Constitution and by statute. A responsible judge respects the constitutional and legislative limitations on his or her power and does not usurp the functions that are delegated to the executive and legislative branches of our government. Judicial activism often results in attempts to solve societal problems by substituting a judges's personal agenda, or policy or political views for those that are lawfully delegated to elected officials or executive agencies.

Suzanne B. Conlon

Suzanne B. Conlon

Senator **Heflin**. Well, we will stand adjourned. Thank you very much.

[Whereupon, at 10:42 a.m., the committee was adjourned.]

WADE BRORBY

Birth:	May 23, 1934	Omaha, Nebraska
Legal Residence:	Wyoming	
Marital Status:	Married	Miriam Call Brorby 2 children
Education:	1952 - 1956	University of Wyoming B.S. degree
	1955 - 1958	University of Wyoming Law School J.D. degree
Bar:	1958	Wyoming
Military Service:	1958 - 1961	United States Air Force Judge Advocate General Corps
Experience:	1961 - 1984	Morgan and Brorby Partner
	1962 - 1970	County & Prosecuting Attorney Campbell County
	1970 - 1974	Deputy County Attorney Campbell County
	1984 - present	Morgan, Brorby, Price & Roberts Partner
Office:	First National Bank Building, Suite 300 319 South Gillette Avenue Gillette, Wyoming 82716 307 682-7213	
Home:	602 Rockpile Boulevard Gillette, Wyoming 82716	

To be United States Circuit Judge for the Tenth Circuit

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

John Wade Brorby

Please Note: Due to the fact that my father's name was John, I have always been referred to by my middle name. Consequently, I am not known as John and all of my affairs have been conducted using the name, Wade Brorby.

2. Address: List current place of residence and office address(es).

Office:	
Morgan, Brorby, Price & Roberts	Office Mailing Address:
Suite 300	P.O. Box 1237
First National Bank Building	Gillette, Wyoming 82716
319 South Gillette Avenue	
Gillette, Wyoming 82716	
(307)682-7213	

Home:
602 Rockpile Boulevard
Gillette, Wyoming 82716

3. Date and place of birth.

23 May 1934
Omaha, Nebraska

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Wife - Miriam (NMN) Call Brorby.
Miriam Brorby is not employed.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Wyoming - 1952-1956
B.S. in Commerce - 1956

University of Wyoming Law School - 1955-1958
J.D. with honor - 1958

Participated in 3-3 program (3 years plus 1 year of Law School equaled a B.S. degree)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1958 to 1961:	United States Air Force Hill Air Force Base, Utah
1961 to 1970:	Morgan and Brorby 300 South Gillette Avenue Gillette, Wyoming

QUESTIONNAIRE FOR JUDICIAL NOMINEES
JOHN WADE BRORBY

1970 to 1984:	Morgan and Brorby 306 South Gillette Avenue Gillette, Wyoming
1984 to present:	Morgan, Brorby, Price & Roberts First National Bank Building 319 South Gillette Avenue Suite 300 Gillette, Wyoming
1978 to present:	Converse County Bank (Director) Doulgas, Wyoming
1978 to present:	Converse County Capital Corporation (Director) Douglas, Wyoming
1980 to present:	First National Bank of Gillette (Director) 319 South Gillette Avenue Gillette, Wyoming
	First Nationl Bank of Gillette Holding Company 319 South Gillette Avenue Gillette, Wyoming
1978 to 1984:	Gillette Broadcasting Company (Director) Gillette, Wyoming
1980 to 1984:	Campbell County Public Land Board (Director) Gillette, Wyoming
1962 to 1970:	Campbell County Prosecuting Attorney Gillette, Wyoming

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes. I served in the United States Air Force from August 1958 to August of 1961.

Rank: First Lieutenant
Serial Number: AO 3054799
Present Status: Honorably Discharged.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

During law school I was on the Dean's list and the President's Honor Roll on various occasions. I was the winner of several book awards, which were given for the highest grades in various law school subjects.

I was on the Editorial Board of the Wyoming Law Journal for two years.

I was an honor graduate of the College of Law at the University of Wyoming.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Wyoming State Bar Association:

1. Chairman of the Wyoming Bar Association Disciplinary Rules Committee which drafted the initial disciplinary rules governing the conduct of all members of the Wyoming State Bar Association. I served on this committee in the early 1970's.

2. Chairman, Wyoming Judicial Supervisory Commission. This commission is created by the Wyoming Constitution and it has jurisdiction over the conduct of all state judges. I was chairman from 1984 to 1986. I was a member from 1982 to 1986.

3. Member of the Wyoming Supreme Court Civil Rules Committee. This committee is appointed by the Supreme Court to review and recommend changes to the court concerning the Wyoming Rules of Civil Procedure. I was appointed to this committee in 1985.

National Conference of Commissioners on Uniform State Laws:

I was appointed by the Governor of Wyoming. I served as a commissioner from 1977 through 1982. After my partner retired, I resigned due to the fact the demands placed upon my time prohibited my ability to devote sufficient time to the affairs of the Conference.

District Bar:

Wyoming is divided into Judicial Districts. Each district elects a Bar Commissioner. These commissioners serve as the board of directors of the Wyoming State Bar Association. At the time I served as District Bar Commissioner for the Fourth Judicial District, 1968-1970, the commissioners were also charged with the responsibility of investigating all grievances filed against attorneys.

Campbell County Bar Association:

I have served as president of the local bar association. I am unsure of the year, probably in 1966.

American Bar Association:

I have been a member of the American Bar Association for over 25 years.

American Judicature Society.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

Please list all other organizations to which you belong (such as civic, educational "public interest" law, etc.).

Insofar as known to me, I belong to no organizations which are active in lobbying. Other organizations are:

1. Presbyterian Church;
2. Gillette Lodge No. 28, AF & AM;
3. University of Wyoming Alumni Association;
4. Wyoming Centennial Commission for Campbell County;
5. Campbell County Economic Development Board;
6. Republican Party;
7. Campbell County Chamber of Commerce;
8. Gillette York Rite; and,
9. Kalif Shrine.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Wyoming - 1958
Federal District Courts - 1958
U.S. Military Court of Appeals - 1958
U.S. Court of Appeals, 10th Circuit - 1969

No admission has ever lapsed.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Wyoming Law Journal, Vol. 12, No. 2, Winter 1958 "Legal Investments for a Wyoming Trustee". Attached is a copy of this article.

I edited numerous articles appearing in the Wyoming Law Journal while serving on the editorial board. I do not recall with certainty which articles I edited.

I have given no speeches on issues involving constitutional law nor on legal policy.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent.

I have annual physical examinations. This year's physical examination was performed on May 5. My physician is Dr. Stephen Jacobson.

14. Judicial Office: State (chronologically) any judicial

offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

It should be noted that while in the Air Force I served as a summary court martial officer. This would be tantamount to serving as a city court judge, handling only misdemeanor cases.

I have for many years been appointed by various District Court Judges as a District Court Commissioner. In Wyoming, the Court Commissioner basically handles those matters which the District Court could hear in chambers, and on rare occasions conducts hearings for persons needing immediate care in the absence of the district judge.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not Applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

In 1962 I ran for and was elected County and Prosecuting Attorney. I was re-elected in 1966. Both races were contested. This office did not require full time service, so I was able to simultaneously conduct a private practice.

I have not been a candidate for any other elective public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and the dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or

offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

1958-1961 Upon graduation from law school and admission to the bar I entered active duty with the United States Air Force. I was stationed at Hill Air Force Base, Utah. While in the service I served with the Judge Advocate General's office. I prosecuted and defended numerous court martials of all types; served as a summary court martial officer; worked in the areas of procurement law and claims; rendered legal advice and opinions and provided legal service to Air Force personnel and their dependents. I was on the Headquarters staff of the Ogden Air Materiel Area.

1961 to present: Upon my discharge from the Air Force, I moved to Gillette, Wyoming, where I entered practice with C. Thomas Morgan under the firm name of Morgan and Brorby. I have always been a partner.

1961 to 1970:	Morgan and Brorby 300 South Gillette Avenue Gillette, Wyoming
1962 to 1970:	County and Prosecuting Attorney Campbell County, Wyoming Gillette, Wyoming
1970 to 1984:	Morgan and Brorby 306 South Gillette Avenue Gillette, Wyoming
1984 to present:	Morgan, Brorby, Price & Roberts First National Bank Building 319 South Gillette Avenue Suite 300 Gillette, Wyoming

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Gillette, Wyoming is a small community. In 1961, when I moved to Gillette, the population was approximately 4,000. The present population of the city area is now approximately 25,000. As a result of the low population, I have always been engaged in a broad and varied general practice. Due to the rapid and significant growth of the community, I have always been extremely busy. Generally speaking, my litigation has been that of a civil defense attorney, although I have maintained a significant number of plaintiff's cases, usually of a commercial character, and on occasion for personal injury.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical clients would include energy companies, such as Cities Service Company, Kerr McGee, and ARCO; banks, such as The First National Bank of Gillette; numerous mineral owners, ranchers, individuals and small business owners.

I have tended to specialize in three areas: (1) litigation; (2) oil and gas; and (3) representation of banks.

c. 1. Did you appear in court frequently, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

During the last three (3) years I have appeared in court occasionally. Prior to that time I appeared in court frequently. I have recently tended to turn most of the routine cases over to partners or associates, although I still try those cases which I deem to be major or when specifically requested to do so by a significant client.

2. What percentage of these appearances was in:

a.	Federal courts.	14%
b.	State courts of record.	79%
c.	Other courts.	7%

3. What percentage of your litigation was:

a.	Civil.	100%
b.	Criminal.	-0-%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Sole Counsel	8
Chief Counsel	6
Associate Counsel	-0-

5. What percentage of these trials was:

a.	Jury.	7%
b.	Non-jury.	93%

I would note that the numbers and percentages above stated covered only the last three years. I have no reliable nor precise numbers for the period of 1958 to 1984. I would offer the following estimates which I feel to be reasonably accurate for the period, 1958 to 1984:

a. I appeared in court frequently;

b. I would estimate the percentage of appearances in:

(i)	Federal Courts	10%
(ii)	State Courts of Record	80%
(iii)	Other Courts	10%

c. The estimated percentage of criminal and civil would be:

(i)	Civil	85%
(ii)	Criminal	15%

d. I would estimate that 15% of these cases were jury trials.

e. By way of further explanation I would state that I have, as sole counsel, tried several hundred cases, perhaps over 500. We only recently "computerized" our office and therefore numbers prior to this time cannot be obtained.

19. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. The date of representation;
b. The name of the court and the name of the judge or judges before whom the case was litigated; and,
c. The individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Having spent hours going through old files in search of ten significant cases suggests to me the question of Epictetus: "What, will the world be quite overturned when you die?" Perhaps, to be more accurate, reviewing old case files has suggested the answer to this question.

Every case of mine has seemed like the world's most significant at the time I was working on it. In reviewing the closed case files I have concluded that the true significance of my cases lies in my mind and perhaps that of my clients.

What follows then are those cases which I deem significant for various reasons:

CASE NUMBER 1

Case Name: Elementary School Districts 2, 3, and 10, of Campbell County, Wyoming, et al v. the District Boundary Board of Campbell County, Wyoming.

Court: District Court of the Fourth Judicial District, Campbell County, Wyoming.

Judge: The Honorable Allen A. Pearson, District Judge

My Participation: Sole Counsel for Boundary Board

Opposing Counsel:
Robert R. Rose, Jr.
Spence, Moriarty & Schuster
2424 Pioneer Avenue
P.O. Box 1006
Cheyenne, WY 82003
(307)635-1533

Date of Trial: July 9, 1968

Appellate Court Citation: 454 P.2d 237 (Wyo. 1969)

Substance of Case: Campbell County had what was then a typical Wyoming situation concerning its schools. As Campbell County is a large county consisting of approximately 5,000 square miles it was divided into twelve elementary school districts. The City of Gillette, which was one of the twelve districts, had approximately ninety percent of the students and less than five percent of the assessed valuation of the county. To further compound the problem, ten of the twelve districts belonged to and supported a high school district and two of the wealthier elementary districts did not belong to any high school district, nor did they support any high school. I was then the county attorney and it became evident that some action needed to occur to solve the problem as most of the children in the county were being denied the opportunity to a reasonable education.

An earlier attempt to solve the problem had been fruitless. A county election was held to determine whether or not all of the school districts should be consolidated into a single new school district. This election was approved by a majority of the electors, however, it was not favorably passed by the electors voting in each of the various school districts as required by statute. Representing the county, I appealed this case to the Supreme Court of Wyoming, based primarily on the principal of "one man, one vote". The Supreme Court of Wyoming rejected this argument and held the election failed. School Districts No. 2, 3, 6, 9, and 10 v. Cook, 424 P.2d 751 (Wyo. 1968).

As counsel for the county, I then advised my clients to pursue a different approach. A boundary board, which consisted of the three (3) county commissioners, the county superintendent of schools and the county treasurer, was constituted pursuant to statute. Public hearings were held and the Boundary Board entered its order consolidating all school districts into a single, new school district with both elementary schools and a high school. In short, the assessed valuation of the county now supported all schools and students equally.

The wealthy school districts challenged the outcome. This case was then tried in the District Court and judgment rendered in my client's favor. The Wyoming Supreme Court affirmed.

Significance of Case: This case afforded two thousand children in this county the opportunity for a better education. The case had further significance in that the precedent established was used by numerous school districts throughout Wyoming to commence and accomplish reorganization of their antiquated school districts and equalize the differences between wealth and students.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
JOHN WADE BRORBY

CASE NUMBER 2

Case Name: Chevron Oil Co. v. Fred L. Barlow and Helen M. Barlow, and the Anschutz Corporation, Inc.

Court: United States District Court for the District of Wyoming

Judge: Honorable Ewing T. Kerr, United States District Judge

My Participation: Sole Counsel for defendants, Fred L. Barlow and Helen M. Barlow

Opposing Counsel:
For the Plaintiff:
Patrick M. Westfeld
Holland and Hart
Suite 2900
555 17th Street
P.O. Box 8479
Denver, CO 80201
(303)295-8000

For the Defendant, Anschutz:
Robert Martin
Martin, Pringle, Oliver, Wallace & Schwartz
300 Page Court
220 West Douglas Street
Wichita, Kansas 67202
(316)265-9311

-and-

Thomas Burns
Burns, Wall, Smith and Mueller
Suite 800
30 East Seventeenth Avenue
Denver, Colorado 80203
(303)830-7000

Date of Trial: 1968

Appellate Court Citation: United States Court of Appeals, 10th Circuit, 402 F.2d 687 (1969)

Substance of Case: An elderly couple, the Barlows, owned a ranch and had leased their minerals to Chevron. The primary term of this oil and gas lease expired on September 18, 1967. On September 8, 1967, Chevron drilled a dry hole upon the Barlow minerals. On October 8, a well was drilled on adjacent acreage which blew out. Obviously this made the Barlow minerals significantly more valuable.

Chevron lost no time in contending that its lease gave it the right to continue drilling so long as no more than 60 days elapsed between the completion of one well (whether it was dry or not) and the commencement of the next.

Anschutz then approached my clients with an offer for an oil and gas lease and it was at this time the Barlows sought my representation. I researched the law and studied the lease and came to the conclusion that my clients were free to accept the Anschutz offer, should they so desire.

Chevron then began making offers for an oil and gas lease and threats as to what would happen if its offer was not accepted. Many significant and substantial offers were made.

The Barlows finally decided to accept the Anschutz offer.

Chevron thereupon commenced suit and moved a drilling rig onto the Barlow lands and commenced drilling operations. My participation in the trial was relatively minor, most of the burden being carried by counsel for Anschutz.

After trial, the U.S. District Court found in our favor as did the 10th Circuit Court of Appeals in a split decision.

Significance of Case: The case was not particularly significant from a legal standpoint. The decision was based upon principles of contract construction.

The real significance of this case to me was the establishment of my own confidence. At this time I was a young and inexperienced country lawyer. At all court appearances counsel for the plaintiff was surrounded by numerous other distinguished and reputable attorneys. Each time plaintiff's counsel spoke, he produced a brief to support his contentions. Plaintiff had unlimited funds.

As a result of this case, I learned I could hold my own and match legal abilities with the best attorneys in the region.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
JOHN WADE BRORBY

CASE NUMBER 3

Case Name: State of Wyoming v. Gerard

Court: District Court of the Fourth Judicial District, Campbell County, Wyoming

Judge:. John P. Ilsley, Jr., District Judge

My Participation: Prosecutor, sole counsel for the State

Opposing Counsel:
Thomas E. Lubnau
408 South Gillette Avenue
Gillette, Wyoming 82716
(307)682-1313

-and-

Tim Watt
1960 Fallbrook Road
Fallbrook, California 92028
(619)723-8560

Date of Trial: 1969

Appellate Court Citation: 511 P.2d 99 (Wyo. 1973)

Substance of Case: In this case the defendant was charged with first degree murder. After trial, a jury convicted the defendant of first degree murder without capital punishment.

The defendant appealed the case. The primary basis of defendant's appeal was that during the course of the trial the defense presented a psychiatrist who testified that, in his opinion, the defendant was legally insane at the time of the commission of the offense. The prosecution had no expert evidence to counter this as the psychiatrists who had examined the defendant were unanimous in their opinions that the defendant was legally insane.

My argument to the jury was very simply that the defendant's actions spoke louder than the psychiatrist's words. As an example, after the shooting, the defendant ran away from the scene of the crime. I argued to the jury that obviously the defendant knew right from wrong or he would not have fled the scene of the crime.

Significance of Case: At that time the case law in Wyoming was very clear that once evidence of insanity was presented by the defense, such evidence would erase the presumption of sanity and the state must then prove sanity beyond a reasonable doubt. The cases, which had been decided by the Supreme Court of Wyoming up to this time, made it clear that the state had the burden to do so with expert testimony.

The significant aspect of this case is the Supreme Court of Wyoming accepted for the first time in a criminal case the principle that the jury is free to disregard the testimony of an expert witness and may base its findings concerning insanity upon the facts testified to by laymen.

The Supreme Court sustained the conviction.

CASE NUMBER 4

Case Name: Murphy v. Petrolane et al

Court: District Court of the Fourth Judicial District, Campbell County, Wyoming

Judge: Honorable C. Stuart Brown, District Judge

My Participation: Sole Counsel for defendant, McCulloch Gas Transmission Co.

Opposing Counsel:

For Plaintiff:

Thomas E. Lubnau
408 South Gillette Avenue
Gillette, Wyoming 82716
(307)682-1313

For Defendant Petrolane:

Edward E. Murane, deceased
formerly with
Murane and Bostwick
350 West A Street, Suite 101
Casper, Wyoming 82601
(307)234-9345

Date of Trial: 1969

Appellate Court Citation: 468 P.2d 969 (Wyo. 1970).

Substance of Case: The plaintiff owned and operated a drug store in Gillette, Wyoming. During a blizzard, cold temperatures condensed gas in the natural gas pipeline owned by my client, McCulloch. This "slug" of condensed gasoline then traveled through the pipeline and to the water heater located in plaintiff's basement. The plaintiff, in attempting to light the gas water heater, caused a fire which burned his store causing considerable damage. The fuel source was, of course, the "slug" of natural gasoline.

This case was fought long and hard in the district court and the net result was the court entering a verdict for both of the defendants based upon the contributory negligence of the plaintiff.

Significance of Case: The plaintiff appealed the case based upon strict liability and implied warranty. At the time, this was a case of first impression in Wyoming.

The Supreme Court adopted the theory of breach of warranty, however, the Supreme Court held contributory negligence to be a defense to an action for a breach of implied warranty.

The factor which gives this case significance to me is Mr. Murane and I petitioned the court for a rehearing. At that time Mr. Murane was an older attorney and one of the most highly respected trial attorneys in the state. I prepared the joint petition for rehearing and in this petition informed the Supreme Court of Wyoming that it had fallen into disrepute with the trial bench and the trial bar of the State. Much to my surprise, Mr. Murane joined with me in the brief. I mention this, not because it displays any great legal skills nor does it display good judgment on the part of counsel, but rather I take pride in it for the reason that it taught me the necessity of being both honest and candid with the court.

The petition for rehearing was not granted, however, two members of the court did vote to grant the petition for rehearing.

As a matter of interest the case was tried a second time and judgment was entered for the plaintiff. In short, the battle was won, but the war was lost.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
JOHN WADE BRORBY

CASE NUMBER 5

Case Name: AMAX Coal Company v. United Mine Workers of America, et al

Court: District Court of the Fourth Judicial District, Campbell County, Wyoming

Judge: Honorable Leonard McEwan, District Judge

My Participation: Sole counsel for AMAX Coal Company, however, I had the advice of a labor attorney, Mr. Francis Sulley, who is now deceased.

Opposing Counsel:
Terry W. Mackey
Rocky Mountain Plaza
2020 Carey Avenue, Suite 709
Cheyenne, WY 82001
(307)637-7841

Date of Trial: 1975

Appellate Court Citation: Not appealed

Substance of Trial: AMAX was the owner of an open pit coal mine located in Campbell County, Wyoming. The mine was a union mine. A strike developed and there were many acts of violence, not only at the mine entrances, but throughout the county. Mass picketing existed, the road to the mine was covered with nails, shots were fired, and threats were made to maim and injure families.

I was retained by my client, AMAX Coal Company, the plaintiff, to seek legal remedies to end the violence. Not being an expert in labor law, I asked for and received the assistance of Francis Sulley, an experienced labor attorney, from Phoenix, Arizona. I utilized Mr. Sulley primarily for liaison to make certain a companion case, which had been simultaneously filed in the United States District Court, was not at cross purposes. In the Federal Court case, I played second chair.

I prepared the evidence, the pleadings, accomplished the research, presented the case, and obtained a temporary restraining order and ultimately a preliminary injunction.

Significance of Case: The threats and the violence subsided and the community was returned to near normal. In my own mind this case prevented injury to persons and property.

Another of the reasons why I feel this case to have significance is all work was done on a minute's notice, time being of the essence.

There were many complex legal problems involved in the case, such as that of attempting to obtain a temporary restraining order and preliminary injunction against an unincoporated association and then completing service of the same upon the appropriate persons.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
JOHN WADE BRORBY

CASE NUMBER 6

Case Name: Black Hills Oil Marketers, Inc., v. Durham Ranches, Inc.

Court: District Court of the Sixth Judicial District, Campbell County, Wyoming

Judge: Honorable Paul T. Liamos, Jr., District Judge

My Participation: Sole Counsel for Durham Ranches, Inc.

Opposing Counsel:
R. Stanley Lowe
True Companies
895 West River Cross Road
P.O. Drawer 2360
Casper, WY 82602-2360
(307)237-9301

Date of Trial: November 11, 1977

Appellate Court Citation: None

Substance of Case: This case is one of the "fun cases" that attorneys sometimes have the privilege to try and it typifies the joys of practice in a small Wyoming town.

The defendant, who was my client, owned a ranch in Campbell County, Wyoming. The defendant raised buffalo, and only buffalo, on its ranch. It is one of the few privately owned buffalo herds in the United States.

One wintery evening, several of the buffalo managed to escape from the pasture and onto the highway where they were struck by a tank-truck owned and operated by the plaintiff. The suit did not involve any significant amount of monies as no personal injuries were involved but only damage to the truck.

The plaintiff grounded its case upon two theories; the first being that of negligence and the second being that of strict liability, i.e., buffalo are wild animals and the owner thereof should be strictly liable in tort for damages caused by the animals.

Depostions were taken of every significant owner of buffalo in the United States, including representatives of the National Park Service. The testimony of all was to the effect that buffalo were unpredictable, dangerous, and were indeed a wild animal.

During the trial of the matter I presented evidence showing that buffalo were herded, branded, and pregnancy tested. I further presented evidence establishing the existence of a recognized market for live buffalo and for buffalo meat.

The court held that buffalo were not wild animals and that plaintiff failed to prove any negligence.

Significance of Case: I am aware of no other court decisions holding that buffalo are not wild animals.

Any significance to this case may be quite limited, unless some future plaintiff should be injured by buffalo. The significance to me lies in the fact that the case was well tried and it further illustrates the fact that trying lawsuits is never dull nor boring in Wyoming.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
JOHN WADE BRORBY

CASE NUMBER 7

Case Name: Steven D. Bailey v. Cities Service Company v. Northern Production Company.

Court: District Court of the Sixth Judicial District, Campbell County, Wyoming

Judge: Honorable Terrence L. O'Brien, District Judge

My Participation: I was sole counsel for Cities Service Company during the pleading and motion phase of the case. Mr. Randal R. Arp, of my office, prepared the brief under my direction and argued to the Supreme Court.

Opposing Counsel:
Plaintiff:

Willis C. Ge
P.O. Box 198
Gillette, Wyoming
(307)682-5131

Third-Party Defendant:
Northern Production
Company:

Michael Golden
Williams, Porter, Day and Neville
145 South Durbin, Suite 300
Casper, WY 82601
(307)265-0700

Date of Trial: 1984

Appellate Court Citation: 705 P.2d 321 (Wyo. 1985).

Substance of Case: Cities Service hired Northern Production to provide certain maintenance services on an oilfield pumping unit. During the process of performing this maintenance the plaintiff, Bailey, who was an employee of Northern Production Company, was hurt. He received Worker's Compensation payments from the State of Wyoming.

Mr. Bailey then sued Cities Service maintaining that it was negligent in the hiring of Northern Production and in failing to maintain a safe work place.

I was retained by Cities Service and upon filing the answer, I also filed a third-party complaint against Northern Production Company, the plaintiff's employer, asking for indemnification based upon an existing contract.

The third-party defendant, through its counsel, Michael Golden, filed a motion to dismiss the third-party complaint and after hearing the argument of counsel, the district court dismissed the third-party complaint. The district court's descision was correct under existing Wyoming law.

The case was then appealed to the Supreme Court of Wyoming where the trial court's decision was reversed.

Significance of Case: Prior to this decision the Supreme Court of Wyoming had held a third-party had no rights against the employer for indemnification when sued by an employee of that employer. As a result of this case the Wyoming Supreme Court allowed an exception to the rule which is stated a third-party may assert a claim for contractual indemnity against an employer for loss attributable to the acts of the employer which may result to the third-party because of the employee's injuries. The trial court's decision was reversed. It should be noted that under Wyoming law, an employer is immune from suit by an employee, except for willful injuries, the employee's sole remedy being workmen's compensation.

In my view the significance of the case lies in the fact that it is somewhat unusual, at least in Wyoming, to have the Supreme Court carve out a new exception to established case law.

As a matter of interest, the case was subsequently decided by the trial court in our favor based upon a motion for summary judgment.

CASE NUMBER 8

Case Name:	Reno Livestock Corporation v. Sun Oil Company
Court:	District Court of the Sixth Judicial District, Campbell County, Wyoming
Judge:	Honorable Terrence L. O'Brien, District Judge
My Participation:	Chief Counsel for Sun Oil Company
Opposing Counsel:	Bruce P. Badley Badley & Rasmussen 411 E. Burkitt P.O. Box 648 Sheridan, WY 82801 (307)672-5878
Date of Trial:	1980
Appellate Court Citation:	638 P.2d 147 (Wyo. 1981)

Substance of Case: The defendant, Reno, had purchased a ranch. The plaintiff, Sun Oil Company, wished to drill an oil well upon deeded lands. The minerals were reserved by the United States and Sun held a federal oil and gas lease and had the right to drill. The rancher denied access to Sun and Sun was placed in the position of needing to gain access immediatley.

Some of the actual work was performed by an associate of the firm while I directed all actions and dictated the pleadings and most other documents.

The court gave my client the right of immediate entry and further granted my client a money judgment.

Significance of Case: Part of the significance of this case was the fact that we asked for, and received, penalties and attorney fees in the Supreme Court for a frivolous appeal. This is a rather unusual remedy.

The primary significance of this case was two-fold. First, many local ranchers, my own clients included, were denying access to mineral exploration and development companies until such time as the rancher received what he deemed to be adequate compensation. It should also be noted that this occurred during a time of an energy shortage and when there existed a near frenzy to drill for, and discover, oil wells. Second, this case caused both oil companies and ranchers to become cognizant of the law and to follow the law in their dealings with one another. What had been significant problems in the community were ameliorated. This case was another which was done quickly and quite professionally with a minimum of charges and expenses to my client. It is a case that I take pride in, not because of any unusual or new law, but rather because of the professional and expeditious manner in which the entire matter was handled.

CASE NUMBER 9

Case Name: Potter v. Gilkey

Court: District Court of the Fourth Judicial District, Campbell County, Wyoming

Judge: Honorable Paul T. Liamos, Jr., District Judge

My Participation: Sole counsel for Potter

Opposing Counsel:

For Gilkey:

Henry A. Burgess
Burgess & Davis
40 South Main Street
P.O. Box 728
Sheridan, WY 82801
(307)672-7491

For Tranel:

Lawrence A. Yonkee
Redle, Yonkee & Arney
319 West Dow Street
P.O. Box 6288
Sheridan, WY 82801
(307)674-7451

Date of Trial: 1976

Appellate Court Citation: 570 P.2d 449 (Wyo. 1977).

Substance of Case: Gilkey and Tranel formed a partnership whereby Gilkey's cattle were kept on the land of Tranel. It was Mr. Tranel's responsibility to care for the herd of cattle. During the course of the winter the cattle did not have sufficient feed and my client, Potter, who owned the adjoining ranch, furnished considerable feed and care to Gilkey's cattle.

The suit raised the questions of whom was to pay for the care and feed for the cattle and who was responsible for the substantial loss of the Gilkey cattle.

The case was tried the first time and my client received judgment against Gilkey. My client believed the amount of damages to be insufficient and the case was appealed to the Supreme Court. The Supreme Court adopted my theory of the case and reversed. This case may be found at 524 P.2d 580 (Wyo. 1974).

The case was then retried. Again, the district judge failed to award to my client what my client and I both believed to be sufficient damages.

The case was again appealed to the Supreme Court and in this appeal the Supreme Court held that my client was entitled to judgment in the amount suggested by me and mandated a judgment be so entered in the Supreme Court.

This case did not make any new or unusual law.

The true significance of the case is not apparent. My client was of the opinion that the trial court was prejudiced against him. As his opinion had some factual support, a preceding was initiated to disqualify the trial judge. This was unsuccessful. The trial atmosphere was consequently strained. This was not helped by opposing counsel, both of whom were and are among the premier trial counsel in Wyoming. The victory came in the Supreme Court when it granted all relief requested by my client and the Supreme Court further gently chided the trial court for its failure to follow the law of the case.

CASE NUMBER 10

Case Name: Barkley v. Campbell County Canvassing Board

Court: District Court of the Sixth Judicial District, Campbell County, Wyoming

Judge: Honorable Terrence [illegible]en, District Judge

My Participation: Sole Counsel for Gillette Broadcasting Company

Opposing Counsel:

For Plaintiff:

John S. Wolfe
Banks, Johnson, Wolfe and Hallock
511 South Kendrick, Suite 101
Gillette, WY 82716
(307)682-2151

For Defendant:

Martell J. Hilderbrand
Willis Geer & Associates
910 East 3rd, Suite A
P.O. Box 1989
Gillette, WY 82716
(307)682-5131

Date of Trial: September 25, 1984

Appellate Court Citation: None involving these issues.

Substance of Case: The plaintiff in this case was a candidate for county commissioner in a contested primary election. The plaintiff received the highest number of votes cast. One of the losing candidates was a convicted felon. The Canvassing Board determined the election was void due to the presence on the ballot of the convicted felon. Plaintiff sought a writ of mandamus requiring the Canvassing Board to declare the election valid.

There was a great deal of publicity concerning the case and therefore, Gillette Broadcasting Company, the owner and operator of the principal radio station in Gillette wished to broadcast the trial. The radio station approached the District Court with this request, which the court denied, citing the Code of Judicial Conduct. Gillette Broadcasting Company then engaged my services to persuade the court to allow a radio broadcast of the trial.

I researched the law and filed a motion to allow broadcast of the trial, contending and asserting that the applicable portions of the Code of Judicial Conduct and Rule 12 of the Uniform Rules of the District Court (both provisions prohibiting broadcast of the trial) were unconstitutional.

The court denied this motion.

I then orally approached the Supreme Court, time being of the essence, and persuaded the Supreme Court of Wyoming to issue its order suspending Canon 7 of the Code of Judicial Conduct for the limited purpose of broadcasting the trial. The District Court then entered its order allowing the radio broadcast of the trial.

Significance of Case: This case represents the first time in the history of Wyoming the courts have been persuaded to open their doors to the electronic media. This case has established precedent to allow the electronic media entry into the court rooms of Wyoming. As the broadcast went smoothly, and no court room problems were encountered, it is probable that Wyoming courts will no longer fear the entry of electronic media into the court room.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of you participation in the matter. (Note: as to any facts requested in this questions, please omit any information protected by the attorney-client privilege.)

    a. I have long felt that a litigant can best be defined as "a person about to give up his skin in the hope of retaining his bones". I believe my most significant legal activity has been the giving of quality legal advice to my clients which has resulted in most being kept out of court.

    b. My home area, Campbell County, Wyoming, is an area of high altitudes and low multitudes. For many years it had a small hospital which was essentially nothing more than a good first aid station or holding area for patients who would soon be transferred to an institution which offered the necessary equipment and expertise. The root of the problem was a lack of funds. The hospital board engaged my services to solve the problem. After researching the law, I advised the creation of a hospital district which would enable the hospital to assess taxes and thereby gain sufficient monies to allow the construction and operation of a good hospital, fully equipped and able to offer the necessary service. I accomplished all of the legal work and services necessary to the creation of this district, including those services relating to the holding of elections to create the district and to issue bonds. I also advised the board as to the strategies incident to successful elections. I advised the board as to their legal options concerning the recruitment of doctors. The end result being a fine, modern hospital, and a medical community where most of the medical disciplines were represented to serve the community.

    c. Wyoming has a constitutionally created judicial supervisory commission which is charged with the supervision, and discipline of all state judges. I was appointed to this commission by the Governor and subsequently elected chairman. All actions taken by the commission are privileged but I believe I can safely state that I have been the only chairman of this commission who has assured that the constitutional mandates were carried out. I also believe the state bench was improved by the actions of this commission during my chairmanship.

    d. I have long helped young and less experienced attorneys at no fee or cost to them or their clients on a confidential basis. I believe my advice to them has made them better attorneys and has thus helped to improve the quality of the bar.

    e. I have been involved in a large number of cases, probably a few hundred, wherein significant disputes have been settled short of trial. Thorough preparation of the facts and extensive legal research usually bring opposing counsel around to my client's viewpoint, thus making the expense and time of trial unnecessary. Many of these cases have involved six and seven figure settlements. I have represented both plaintiffs and defendants.

f. I have spent considerable time advising non-profit associations, without cost to them, informing members of these associations of their legal obligations and responsibilities and have donated all work necessary to qualify many under Section 503 of the Internal Revenue Code. I feel this advice has been of direct benefit to the community and many of its residents.

g. I have been involved in more litigation than most attorneys. Should the committee be desirous I would be happy to discuss the particulars, insofar as permitted by the attorney client privilege, of any of these cases. I feel that my legal representation of clients has been superior. When a client reposes his trust and confidence in his attorney, that attorney owes the client his best efforts, intellect, research, preparation, advice, and enthusiasm. I believe I have always fulfilled my obligations to my clients.

h. I have been charged by my clients with the responsibility of negotiating and consummating several large (7 figure) business transactions. All have been successfully consummated.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
JOHN WADE BRORBY

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   a. I am a partner in the law firm of Morgan, Brorby, Price & Roberts. Should I be confirmed I will immediately withdraw as a partner. The partnership agreement provides that I will be paid for my share of the capital accounts and profits earned and collected prior to my withdrawal within 90 days. I will then be paid an additional sum based upon profits earned prior to my withdrawal. The remaining partners will have the option of paying this sum to me in cash or may pay it to me in 48 monthly payments with interest at 10%. I do not know what the amounts will be and they can be calculated only after a date of withdrawal is established. The amount will be a sum certain.

   b. I have a self funded retirement plan with the American Bar Association. This is a Keogh plan. At the present time the balance in this plan is approximately $88,000.00.

   c. My stock in the First National Bank of Gillette and the Converse County Bank and the Converse County Capital Corporation will be sold in a cash transaction should I be confirmed. The bank stock in each of the banks will be sold pursuant to a written agreement for $500.00 to each bank, payable immediately upon my resignation as a director, which would occur immediately should I be confirmed. Upon my resignation as a director of the Converse County Bank, the Converse County Capital Corporation will be obligated to purchase my stock in this corporation for a sum certain, which is payable in full within 90 days from my resignation. The date of my resignation will be needed to determine the purchase price. The amount will be a sum certain.

   d. My partnership interest in The Six Hundred Apartments will be sold as soon as a buyer can be found. I have no way of knowing when or for how much this property will be sold.

   e. I will then have no other financial arrangements, stock options, deferred compensation agreements, future benefits or any other continuing business relations.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   If confirmed, I would take immediate steps to reduce any potential conflicts by divesting myself of my business interests.

I would determine the areas of concern in accordance with the applicable Code of Judicial conduct and in accordance with the Ethics in Government Act.

I would resolve any potential conflict by informing the members of the Court and court personnel and by withdrawing from any participation in the case involved.

I do not believe any categories of litigation would be likely to present a potential conflict-of-interest.

The financial arrangements described in paragraph No. 1 above would present a potential conflict-of-interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500.00 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure REport, required by the Ethics in Government Act of 1987, may be substituted here.)

A copy of the required Financial Disclosure Report is attached.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

The schedule with attachments is affixed hereto.

6. Have you ever held a position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Only my own elections for County Attorney in 1962 and 1966. I was the candidate and had full responsibilities therefore.

FINANCIAL STATEMENT

WADE BRORBY and MIRIAM C. BRORBY

NET WORTH

August 7, 1987

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household. All amounts rounded to nearest $1.00

ASSETS			
Cash on hand and in banks		88	436
U.S. Government securities—add schedule			0
Listed securities—add schedule		219	104
Unlisted securities—add schedule		263	300
Accounts and notes receivable:			
Due from relatives and friends			0
Due from others		10	000
Doubtful			0
Real estate owned—add schedule		155	172
Real estate mortgages receivable		46	600
Autos and other personal property		64	133
Cash value—life insurance		9	000
Other assets—itemize: See Schedule		139	028
Total assets		994	773

LIABILITIES			
Notes payable to banks—secured			0
Notes payable to banks—unsecured			0
Notes payable to relatives			0
Notes payable to others			0
Accounts and bills due			0
Unpaid income tax			0
Other unpaid tax and interest			0
Real estate mortgages payable—add schedule			0
Chattel mortgages and other liens payable			0
Other debts—itemize: None			
Total liabilities			0
Net worth		994	773
Total liabilities and net worth		994	773

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor		74	578
On leases or contracts			0
Legal Claims			0
Provision for Federal Income Tax			0
Other special debt			0

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	No		
Are you defendant in any suits or legal actions?	No		
Have you ever taken bankruptcy?	No		

WADE BRORBY - MIRIAM BRORBY, FINANCIAL STATEMENT

LISTED SECURITIES INCLUDING BONDS

ITEM	SHARES	MARKET VALUE
Franklin Tax Free Income Fund, Nat'l Insured	3981	$43,273.47
Limited Term Municipal Fund, Inc.	1894.223	$25,666.72
Alliance Bond Fund - U.S. Government Portfolio	567.58	$5,164.00
Uinta County, Wyoming, SD# 1, GO Bonds		$45,000.00
Lincoln County, Wyoming, SD# 1, GO Bonds		$100,000.00
	TOTAL	$219,104.19

UNLISTED SECURITIES

ITEM	SHARES	MARKET VALUE
Campbell County Abstract Company	15	$7,500.00
Converse County Bank	20	$500.00
Converse County Capital Corporation	196	$254,800.00
First National Bank of Gillette	20	$500.00
	TOTAL	$263,300.00

WADE BRORBY - MIRIAM BRORBY, FINANCIAL STATEMENT

REAL ESTATE

DESCRIPTION	COST BASIS
Residence 602 Rockpile Gillette, WY	$61,167.50
600 Apartments (1) 600 Gillette Ave. Gillette, WY	$79,255.00
Call Building (2) 215 E. 21st Ave. Torrington, WY	$14,250.00
Over riding royalty 1/4 of 1% oil & gas lease-Campbell Coun	$500.00
TOTAL	$155,172.50

(1) This property is owned one-half by Wade & Miriam Brorby and one-half by Robert F.& Molly Barlow. This partnership is named "The Six Hundred".

(2) This property is owned one-half by Miriam Brorby and one-half by her sister, Phyllis Bohannan.

(3) I have no appraisal nor reliable information to establish market value. These values are my personal opinion. I have used cost on the balance sheet.

OTHER ASSETS

ITEM	
American Bar Association - Retirement Plan	$89,029.57
Morgan & Brorby Law Office	$50,000.00
TOTAL	$139,029.57

QUESTIONNAIRE FOR JUDICIAL NOMINEES
JOHN WADE BRORBY

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have consistently, throughout my entire legal career, spent time in an effort to serve the disadvantaged. Specific instances of my "pro-bono" work would include the following:

a. I frequently serve the aged by preparing for them living wills, wills, powers of attorney and other documents. I have helped them secure social security and medicare. All of these services and more have been rendered without charge. In an effort to help the recipients of these services feel that they have not received "charity" I usually send them a bill with no amount and marked "Paid in full by your continuing friendship";

b. I have on several occasions represented women who have claimed to be victims of sexual harassment and discrimination who have held low paying jobs and were unable to afford legal representation;

c. Prior to the county assuming the financial burden, I have represented many young mothers in securing divorces from abusive husbands and have represented many in securing child support;

d. I have represented high school students who have been accused of various crimes;

e. I volunteered, in writing, with the Wyoming State Bar Association, approximately two years previous, to accept pro-bono cases;

f. I have encouraged members of my law firm to follow the same practices in this regard;

g. I have attempted to spend 8 hours per month providing pro-bono services such as those described above.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates-- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these polices?

I do not now belong nor have I ever belonged to an organization which invidiously discriminates on the basis of race, sex or religion.

In the interest of full disclosure, I have in the past belonged to all male organizations such as the Boy Scouts and Rotary. At the present time I still maintain my memberships in three Masonic organizations, which are all male. These organizations are the Gillette Lodge No. 28, AF & AM; the Gillette York Rite; and the Kalif Shrine.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interveiws in which you participated).

Yes. The merit selection committee recommended my nomination.

My experience in the entire judicial selection process would be as follows:

a. The Merit Selection Committee publicly announced that it was accepting applications from those persons interested in this nomination. I wrote and expressed my interest and was sent a form which I believe to be substantially the same as is used for the selection of all Wyoming judges. I completed this form and returned it to the Merit Selection Committee;

b. I had no interview with the members of th Merit Selection Committee, probably for the reason that all members know my professional abilities from personal experience;

c. After being selected by the Merit Selection Committee, I traveled to Washington, D.C. where I was interviewed by several individuals with the Justice Department;

d. I completed the requisite forms for the F.B.I. and the American Bar Association;

e. I was interviewed by a member of the American Bar Association; and,

f. I was interviewed by two F.B.I. agents concerning my background.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or questions in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a) A tendency by the judiciary toward problem- solution rather than grievance-resolution;

b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending the broad classes of individuals;

c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In order to discuss my views on the criticism involving "judicial activism" as set forth above, it may be helpful to more precisely define the term "judicial activism". Certainly the five characteristics of "judicial activism" as set forth in the above questions would be included in any definition of the term. "Judicial activism" is best defined as a description of those situations where there exists controlling statutory provisions which, either by itself or within well established interpretation, will resolve the issue, but which the court chooses not to follow. Examples of "judicial activism" nearly always are evidenced by the tendency of some courts to apply various laws as they deem wise, rather than as the laws are written.

Proponents of judicial activism have argued that courts legitimately can claim the creative power to make law and invent remedies as the essential purpose of courts is not to resolve disputes, but rather to carry out public policy and vindicate public values. In other words, the proponents of this view claim that the law should promote policy objectives.

My own views are to the contrary.

A discussion of judicial activism involves the answer to two basic questions: First, may a court legitimately claim the power to make law and invent remedies or is the court's role limited to implementing law and remedies which other institutions of government create? Second, is a court limited to deciding cases or is an essential purpose of a court to carry out public policy and vindicate current public values?

To properly answer these questions and to professionally explore examples and my reasoning would probably require a few hundred pages. Being confident that no one has either the time or the inclination to read such an essay, I will condense my views, understanding that this will result in the loss of some precision.

As to the first question, my views are that courts basically have the jurisdiction only to implement law and remedies which other institutions of government have created. The reasons, briefly and summarily stated, would include the concepts that: (1) Courts lack the authority to make law as this power is expressly reserved to properly elected officials under our Constitution; (2) Courts lack the competence to make law in that they do not possess the time and the administrative resources to carefully consider the numerous facts and factors involved in making law; (3) As courts are not elected, they are not attuned to the forces and competing values which go into the making of laws as are elected officials; and (4) If courts were to decide cases without regard to the doctrine of stare decisis, chaos and confusion would soon prevail and going to court would be an experience tantamount to purchasing a lottery ticket.

As to the second question, my views are that a court's essential function is that of deciding cases. The basic question a court should strive to answer is, should the decision be for the plaintiff or for the defendant in a particular dispute. The law, and not what a court may perceive as desirable policy, should be the determinative factor in a case decision. Strong checks and balances are an essential part of our Constitution. The concept behind this separation of powers is to prevent the control of the entire government by one hand, even if that hand is benevolent. Courts should be exceedingly careful not to upset this balance, even if their motives are pure and righteous. The rights of the minority will be insecure if courts allow themselves to step into areas of government reserved by the Constitution to the executive and legislative branches of our government. The law must be reliable and predictable and to this end our Constitution does not permit courts to legislate.

Courts are not free to impose their individual will on the resolution of the issues of the day. If courts are to protect and enforce the rights of the individual and of the minority, it is imperative that courts also recognize their proper place in our constitutionally mandated and protected form of government. Good motives, fine intentions, and excellent results are not sufficient reasons to allow courts to exceed the boundaries placed upon them by our Constitution. The power of each branch of government is limited by the Constitution in order to avoid the concentration of power. All branches of our government must be cognizant of their Constitutional limitations otherwise the rights of the individuals and minorities will soon disappear.

AMERICAN BAR ASSOCIATION

Standing Committee on Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

CHAIRMAN
and Member-at-Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Gene W. Lafitte
One Shell Square
50th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One IBM Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA
CIRCUIT & FEDERAL
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

BOARD OF GOVERNORS
LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF DIRECTOR
Wantland L. Sandel, Jr.
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5685

STAFF ASSISTANT
Diane Livingston
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5701

RECEIVED AUG 13 1987

August 10, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: WADE BRORBY
United States Court of Appeal
for the Tenth Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Wade Brorby for appointment as Judge of the United States Court of Appeals for the Tenth Circuit.

Our Committee is unanimously of the opinion that Mr. Brorby is "Well Qualified" for this appointment.

Sincerely,

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

PAUL V. NIEMEYER

Birth:	April 5, 1941	Princeton, New Jersey
Legal Residence:	Maryland	
Marital Status:	Married	Susan Kinley Niemeyer 3 children
Education:	1958 - 1962	Kenyon College A.B. degree
	1962 - 1963	University of Munich
	1963 - 1966	University of Notre Dame Law School J.D. degree
Bar:	1966	Maryland
Experience:	1966 - present	Piper & Marbury Associate (1966-1974) Partner (1974-present)
Office:	36 South Charles Street Baltimore, Maryland 21201 301 576-1639	
Home:	405 Overhill Road Baltimore,Maryland 21210	

To be United States District Judge for the District of Maryland

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   Paul V. Niemeyer

2. Address: List current place of residence and office address(es).

   Office:
   Piper & Marbury
   36 South Charles Street
   Baltimore, Maryland 21201

   Home:
   405 Overhill Road
   Baltimore, Maryland 21210

3. Date and place of birth.

   April 5, 1941; Princeton, New Jersey

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

   Married: Susan Jane Kinley

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   University of Notre Dame Law School (1963-66) - LL.B. 1966 (later converted to J.D.)

   University of Munich (1962-63) - one year of post graduate study - no degree sought

   Kenyon College (1958-62) - A.B. 1962

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

October, 1974 - date:
Partner - Trial Lawyer
Piper & Marbury
36 South Charles Street
Baltimore, Maryland 21201

June, 1966-October, 1974:
Associate - Trial Lawyer
Piper & Marbury
36 South Charles Street
Baltimore, Maryland 21201

Future Cars, Inc. (Pennsylvania corporation)
Lume, Inc. (Pennsylvania corporation)
Second & Kedron Avenues
Folsom, Pennsylvania 19033
(my brother's car dealership)
(Secretary and director for each corporation:
June 1976 - December 1984)

Church of the Redeemer
- former vestry member
- former Registrar

Friends of Modern Art (Baltimore Museum of Art)
- board member (1986 -)

Double N (I am a partner with Lewis A. Noonberg; the partnership owns a vacation home)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

   a) American Judicature Society - Special Merit Citation 1987

   b) Section of Litigation, Maryland State Bar Association - Distinguished Service Award 1981

   c) Notre Dame Law Review
      - member 1964-65
      - Development Editor 1965-66

   d) See also honorary memberships listed below as items 9(a), (b), (c), (e), (j), (k)

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

(a) Fellow, American College of Trial Lawyers (1985 -)

(b) Fellow, American Bar Foundation (1986 -)

(c) Member, American Law Institute (1984 -)
  Consultative Group on Unfair Competition (1987 -)

(d) Permanent Member, Fourth Circuit Judicial Conference
  (197_ -)

(e) Fellow, Maryland Bar Foundation (1984 -)

(f) American Bar Association (1967? -)

(g) Maryland State Bar Association (1967 -)
  - former member of the Ethics Committee
  - former co-chairman Litigation Rules Liason Committee
  - member Litigation Section

(h) Baltimore City Bar Association (1967 -)
  - former chairman Grievance Committee
  - former member Judicial Selection Committee

(i) Association of Defense Trial Counsel (1970? - 1980?)

(j) Court of Appeals Standing Committee on Rules of
  Practice and Procedure ((1973 -)

(k) Court of Appeals Select Committee on Rules of
  Professional Conduct (1983 - 1985)

(l) Attorney Grievance Commission (1978 - 1981)

(m) Wednesday Law Club

(n) Notre Dame Law Review (1964 - 1966)
  Development Editor (1965 - 1966)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Court of Appeals Standing Committee on Rules of Practice and Procedure

Court of Appeals Select Committee on Rules of Professional Conduct

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for the lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Court of Appeals of Maryland - December 1966

United States District Court for the District of Maryland - March 1967 (Trial Bar No. 00184)

United States Court of Appeals for the Fourth Circuit - March 1968

United States Supreme Court - December 1970

United States District Court for the Southern District of Texas - 1977

United States Court of Appeals for the Fifth Circuit - April 1978

United States Court of Appeals for the Third Circuit - May 1980

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Co-author with Linda Richards of Maryland Rules Commentary, Michie 1984

Author "The Maryland Rules - A Time for Overhaul" 9 Bal. L. Rev. 1 (1979)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. My most recent physical examination was performed by Dr. Howard Bronstein on July 2, 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Member, Court of Appeals of Maryland Standing Committee on Rules of Practice and Procedure (1973 to date)

Member, Court of Appeals of Maryland Select Committee on Rules of Professional Conduct (1983 to 1985)

Attorney Grievance Commission - hearing panel member (1978-81)

All positions appointed.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

On graduation from law school, I accepted a position as associate at Piper & Marbury (now located at 36 South Charles Street, Baltimore, Maryland 21201). On October 1, 1974 I became a partner and have remained one since.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have always practiced full time as a litigator. In the first two to three years I practiced mostly in the Peoples Court of Maryland (now District Court of Maryland), trying up to 2-3 cases per week. These were small personal injury cases. I also worked as "second chair" on larger commercial cases. Over the next five years I began trying jury trials on my own and the number of commercial cases increased. I worked "second chair" on larger commercial cases. Over the last 10-12 years I have tried as lead counsel large commercial cases exclusively, mostly in the areas of contract, antitrust, unfair competition, and commercial torts. While I have tried several plaintiff's cases, the greater number have been for corporate defendants.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have probably averaged about 3 trials per year in recent years; more in earlier years.

2. What percentage of these appearances was in:
(a)federal courts;
(b)state courts of record;
(c)other courts.

I estimate that 75% of my practice in the last ten years has been in federal courts, and 25% in state courts; earlier, the percentage for state courts was significantly higher.

3. What percentage of your litigation was:
(a)civil;
(b)criminal.

All civil, although I have tried several criminal cases over the years, by court appointment.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In the last five years I have tried an estimated 5-10 cases to verdict or judgment. I was lead counsel and in most had one or more associates helping. Before then, I have tried hundreds of cases, mostly smaller.

5. What percentage of these trials was:
(a)jury;
(b)non-jury.

Approximately 50% jury in recent years; earlier the percentage was perhaps 15%.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1) Attorney Grievance Commission v. Hyatt, in the Court of Appeals of Maryland, 302 Md. 683, 490 A.2d 1224 (1985)

Opposing Counsel:
Melvin Hirshman, Bar Counsel
Attorney Grievance Commission of Maryland
District Court Building
Room 404, 580 Taylor Avenue
Annapolis, Maryland 21401
(301) 269-2791

We represented the defendants in this lawyer advertising case that received national media attention. On the complaint by the Prince Georges County Bar Association that Hyatt television advertising was misleading, the matter was referred to a hearing panel before which evidence was presented. Upon the filing of charges, it was tried before Judge Howard Chasanow, who was designated by the Court. The trial lasted for a week. The findings were then argued before the Court of Appeals. While some of the findings of Judge Chasanow were adverse to Hyatt, the Court of Appeals dismissed all charges on jurisdictional grounds. I was lead counsel and was assisted by an associate, Richard Dunne.

2) Production Machinery, Inc. v. Trennjaeger Maschinenfabrik, Civ. Action M-82-1649, United States District Court for the District of Maryland (Judge James R. Miller, Jr.)

Opposing Counsel: Wilbur D. Preston, Jr., Esq.
Ward B. Coe, III, Esq.
Whiteford, Taylor, Preston
Suite 1400,
Seven St. Paul Street
Baltimore, Maryland 21202
(301) 347-8700

We represented the defendant against a claim for breach of a distribution contract between a German firm (our client) and plaintiff, also from Germany. The trial, before a jury, raised significant problems in reconstructing a contract, or absence of one, based on fragmented agreements and broken negotiations. While the case was important to the parties, it did not raise significant new legal issues. This case presented to me the extreme difficulty in putting on a case successfully through an interpreter, which I had to do. The case was tried to a jury, lasting approximately one week in March, 1983. The jury rendered a verdict of approximately $700,000 and was settled thereafter for a lesser amount. I was lead counsel and was assisted by an associate, Lamar Garren.

3) RCM Supply Co. v. Hunter Douglas, Inc., in the United States District Court for the District of Maryland, Judge Joseph H. Young, and the United States Court of Appeals for the Fourth Circuit, Judge Bryan for the majority and Judge Sprouse for the dissent. 686 F.2d 1074 (1982)

Opposing Counsel: Thomas D. Washburne, Esq.
Ober, Kaler, Grimes & Shriver
Suite 1600
Maryland National Bank Bldg.
Baltimore, Maryland 21202
(301) 685-1120

William Pinzler, Esq.
Victor Friedman, Esq.
Fried, Frank & Harris
One New York Plaza
New York, New York 10004
(212) 820-8077

We represented plaintiff in connection with a termination of a distribution arrangement and an attempt to put plaintiff out of business. The suit claimed an attempt to monopolize under the federal antitrust laws and common law torts. It was tried for some 3 weeks before a jury, which rendered a verdict for plaintiff for approximately $4.5 million. This was perhaps the largest verdict in that court to that date, and the case received front page media attention. On appeal, a split court reversed.

On remand, the case was settled. I was lead counsel and was assisted by an associate, John Griffith.

4) Bethesda Ford, Inc. v. Ford Motor Company

Before the Motor Vehicle Administration of Maryland
Harley P. Brinsfield, Jr., hearing examiner
(Trial days May 19, 20, June 7, 8 and 9, 1982)

Circuit Court for Montgomery County
Law No. 61703, Judge John J. Mitchell

Court of Special Appeals of Maryland
PHC No. 1047, September Term, 1982

Court of Appeals of Maryland on Petition for Writ of Certiorari

Related actions:

J.J.F. Management Services, Inc. et al v. Ford Motor Dealership Facilities Co., et al. in the Circuit Court for Montgomery County, Equity No. 78575, Judge Richard B. Latham

Ford Motor Dealership Facilities Co. v. Bethesda Ford in the Cicruit Court for Montgomery County, Equity No. 75248, Judges Richard B. Latham and John F. McAuliffe

In the Court of Special Appeals of Maryland No. 1966, September Term, 1982

In the Court of Appeals of Maryland, No. 593 September Term, 1983

Bethesda Ford, Inc. v. Ford Motor Co. in the United States District Court for the District of Maryland, Civil Action Y-82-206, Judge Joseph H. Young

Opposing Counsel:
Elbert R. Shore, Jr., Esq.
Bell, Cornelius & Shore
101 West Jefferson Street
Rockville, Maryland 20850
(301) 762-3535

John P. Arness, Esq.
815 Connecticut Avenue
Washington, D.C. 20006
(202) 331-4553

We represented Ford Motor Company and its subsidiaries in this extremely complex, multi-forum dealer termination case, which was pending simultaneously in the federal court, state court (several actions), and the regulating motor vehicle agency. The issues, involving breach of contract, dealer day in court acts, and antitrust laws, was first tried for five days before the agency. The other actions, in which the dealer claimed millions of dollars in damages, were resolved on the basis of the original findings, which had been appealed to three higher levels. The issues were resolved factually for Ford. In the end Ford obtained a judgment against the dealer, the satisfaction of which resulted in settlement of all actions. I was lead counsel and was assisted by associates Deborah Jennings and David Clark.

5) Whalen v. Ford Motor Credit Co. in the United States District Court for the District of Maryland, Judge Stanley Blair and, after his death, Judge Herbert Murray; on appeal to the Fourth Circuit, Judge Butzner for the majority and Judge Murnaghan dissenting (32 F.R. Serv. 678 (1981)); on rehearing in banc, Judge Murnaghan for the majority, Judge Winter concurring, Judge Butzner for the dissent (684 F.2d 272 (1982)). Certiorari denied, 459 U.S. 910.

Opposing Counsel: David Freishtat, Esq.
Freishtat & Sandler
Suite 1500
One Calvert Plaza Building
201 East Baltimore Street
Baltimore, Maryland 21202
(301) 727-7740

We represented the defendant against a claim for breach of a loan commitment. After a 5-6 week trial before a jury, a verdict of $4.3 million was entered for the plaintiff. After three weeks of testimony, in the middle of trial, Judge Blair died and Judge Murray continued the trial over objection. The Fourth Circuit affirmed 2-1 on appeal and reversed after a rehearing in banc, 5-1-4. The case was an extremely large verdict at the time and raised novel issues that received media and law review attention. I was lead counsel and was assisted by various associates, principally Jeffrey D. Herschman. On appeal I was assisted by William Marbury and Franklin Allen.

6) Almeda Mall, Inc. v. Houston Lighting & Power Co. in the United States District Court for the Southern District of Texas, Judge Carl O. Bue, Jr., and the United States Court of Appeals for the Fifth Circuit (Coleman, Ch. J.), 615 F.2d 343 (1980), certiorari denied, 449 U.S. 870.

Opposing Counsel: Walter E. Workman, Esq.
Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002
(713) 229-1234

We represented the plaintiff in this antitrust case based on Houston Lighting & Power's refusal to sell electricity for redistribution in shopping centers by owners of the centers. The case was at the cutting edge of antitrust enforcement. After two weeks of trial before a jury and after all evidence was presented, Judge Bue granted judgment for defendant, which was affirmed on appeal. My partner, Lewis A. Noonberg, and I shared lead counsel (he opened and I was to close, and we split witnesses). We were assisted by associates, principally David F. Tufaro.

7) Roman Meal Company v. O-M Bread, Inc., et al, Civil Action M-78-737, in the United States District Court for the District of Maryland, Judge James R. Miller.

Opposing Counsel: G. Franklin Rothwell, Esq.
Saghrue, Rothwell, Mion, Zinn
& Macpeak
1776 K Street, N.W.
Washington, D.C. 20006
(202) 293-7060

We represented Roman Meal Company in this industry trademark contest that related back to a prior action between the parties for the same type violations. The two companies were the largest producers of variety bread and were each complaining of long term confusion nationally over their respective packagings. The case received media attention. It was tried for a day or two in the Summer of 1978 before Judge Miller on an injunction issue and before a jury for several days in September and October, 1978. Roman Meal succeeded in enforcing a packaging change. I was lead counsel and I was assisted by an associate, Dorothy A. Beatty.

8) Nelson H. Shapiro v. General Motors Corporation, in the United States District Court for the District of Maryland, Judge Joseph H. Young, 472 F. Supp. 636 (1979), and on appeal in the United States Court of Appeals for the Fourth Circuit, 636 F.2d 1214, certiorari denied, 451 U.S. 909.

Opposing Counsel: Melvin J. Sykes, Esq.
906 Munsey Building
Baltimore, Maryland 21202
(301) 727-3078

Robert H. Rines, Esq.
Rines & Rines
No. 10 Post Office Square
Boston, Massachusetts 02109
(617) 482-3289

We defended General Motors Corporation against an antitrust claim that the automobile manufacturers had conspired not to take licenses from plaintiff for seat belt patents owned by plaintiff. It raised novel issues of monopsony and oligopsony and presented our client with enormous exposures - a royalty on all seat belts used by General Motors. The case was decided on motion and argument. I was lead counsel for General Motors.

9) Wooters v. Jornlin, et al., in the United States District Court for the District of Delaware, Latcham, Ch. J., 477 F. Supp. 1140 (1979), and on appeal in the United States Court of Appeals for the Third Circuit, 622 F.2d 580, certiorari denied, 449 U.S. 992.

Opposing Counsel:
Elwyn Evans, Jr., Esq.
1500 North French Street
Wilmington, Delaware
(302) 656-5999

We represented Maryland National Bank in connection with alleged construction deficiencies in a large real estate development in Delaware which the Bank financed. The issue emerged, which was becoming more of a risk to national banks whose business crossed into other states, whether venue rights under the National Bank Act would protect the Bank from suit outside its own state. The issue was decided on motion and argument and affirmed on appeal. Allen M. Terrell, Esquire, One Rodney Square, Wilmington, Delaware (302-658-6541), assisted me as local counsel.

10) Quality Discount Tires v. Firestone Tire & Rubber Co., in the Circuit Court for Baltimore County, Judge Marvin Land, and on appeal in the Court of Appeals of Maryland, 282 Md. 7, 382 A.2d 867 (1978).

Opposing Counsel:
Shale D. Stiller, Esq.
George W. Liebmann, Esq.
Frank, Bernstein, Conaway
& Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(301) 625-3500

We defended the defendant in one of the first cases tried under the Maryland antitrust laws. The claim was that Firestone conspired with other dealers to maintain prices. After several days of trial before a jury, Judge Land granted motion for directed verdict. It was reversed on appeal and on remand later dismissed. I was lead counsel and was assisted by my partner, Lewis A. Noonberg.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

- For the last five years I have been representing The Rouse Company in a major construction case involving some $20 million in actual damages. The case involves eight actions, six of which are consolidated; 15 parties; hundreds of witnesses; over 160,000 documents; and novel questions of condominium law, limitations, undefined duties of suppliers, subcontractors, architects and engineers, and a new, untried building technology. The litigation has received significant local media attention and is one of the largest cases to be handled in the state judicial system. I am lead counsel and am assisted by five or six partners and associates.

- As a member of the Standing Rules Committee of the Court of Appeals of Maryland, I chaired the subcommittee that supervised the reorganization and rewrite of the Maryland Rules of Procedure. On adoption of the rules I, together with a few others, presented 15 or so all day presentations to the bench and bar of Maryland explaining the new rules. Chief Judge Robert Murphy of the Court of Appeals characterized my role as father of the rules. The American Judicature Society awarded me the Special Merit Citation.

- I co-authored the text that explains the new rules - Maryland Rules Commentary.

- In the space of a year or two, I tried to verdict two of the largest cases at that time in the federal court in Maryland. I won a verdict of over $4 million and lost one in a similar amount. Both were multi-week jury trials and both were reversed on appeal. I was lead counsel in both.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   - Under the partnership agreement with my firm (Piper & Marbury), which I will be terminating, I will receive paid-in capital and my interest in the firm over a period of three years.

   - I have, over the years, contributed annually to a Keogh plan, which is part of my firm's retirement plan and which is managed by Alex, Brown & Sons in Baltimore. I do not intend to make any further contributions, but intend to leave my contributions in the plan until they can be removed without penalty. I have not had, nor will I have, any responsibilities or privileges in managing the fund.

   - I will continue to be a partner with Lewis A. Noonberg in a Maryland partnership known as the Double N. The Double N owns a vacation home on Deep Creek Lake in Oakland, Maryland. It is not rented or used for income or losses.

   - I expect to continue to receive minor royalties from the Michie Company in Charlottesville, Virginia for a book published in 1984.

   - I will withdraw completely from the firm. Under the partnership agreement, I will receive installments quarterly for a period of three years as payment to me of my paid-in capital and my interest in the firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   When confronted with a matter that gives rise to an impermissible conflict or potential conflict, I intend to recuse myself from considering the matter. I intend to refrain from handling matters in which partners or associates of my firm are involved during the distribution period of my interest in the firm. For a similar period I intend to refrain from considering matters involving clients of the firm.

Thereafter, I will refrain from considering matters involving firms or persons with whom I still have an involvement. In every case, I will recuse myself when I feel my independence of judgment is influenced by a relationship past or existing.

For three years I intend to keep a roster of Piper & Marbury lawyers and clients or, with respect to clients, have access to a client list.

The potential conflicts are most likely to be created by the participation of former clients and law firm associates.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See attached statement.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

   See attached statement.

6. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Since 1973 I have worked on various efforts to improve procedures in the courts to make them more accessible and efficient. In this regard I chaired a subcommittee assigned to rewrite the Maryland Rules and worked on that effort for 10 years. Over a period of two years, I presented approximately 15 all-day lectures to members of the Maryland bar to explain the new procedures. On several occasions I lectured the state judges and court clerks. All these efforts were without compensation.

On occasion I have been appointed by courts to represent indigents. During the course of the riots in Baltimore, I spent several days representing defendants *pro bono*. I have also been appointed by the United States District Court on one or two occasions to represent indigents.

Our law firm has actively supported *pro bono* work. We opened the first neighborhood law office in East Baltimore, and now cooperate with the University of Maryland in operating a clinic, all at firm expense.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership. What have you done to try to change these policies?

None.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No selection commission to my knowledge reviewed my nomination to the federal bench. In February, 1987 several members of the federal bench in Maryland urged me to submit my name for consideration to fill the vacancy then open. During that period I consulted my wife, several judges, and several partners in my law firm. After a 10-day period during which I considered the possibility, I decided to proceed with the process. Despite the very substantial sacrifice in income, I was motivated by the opportunity to serve in the belief that I might be able to make a contribution. All those with whom I consulted believed that I had some attributes which would serve me well in office.

I interviewed approximately six different representatives of the Department of Justice over a day and one-half. At my own initiative, I also interviewed two members of Congress from Maryland.

In April, 1987 I was advised that the Department of Justice would recommend me for the office, and in June I was advised that my name would be submitted for an FBI background investigation and an evaluatin by the ABA. In connection with those investigations, I interviewed two special agents of the FBI and a representative of the American Bar Association.

In August, I was advised that my name would be submitted to the President for nomination, and on September 9, 1987 I was nominated.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My views on the points raised are best expressed in the following statement of my understanding of the proper role of the judiciary:

> The Constitution confers only the judicial power on the courts. The judicial power, as I understand it, is the power to resolve good faith disputes between litigants that actually arise under the Constitution and laws of the land. The judiciary are devoted solely to resolution of such disputes and then only when actually presented.
>
> It is my belief that the judiciary must be ever mindful that the making of laws belongs to the legislative branch and the execution of them to the executive. This separation and balance provides a basic structure which underlies the design of the Constitution and probably is largely responsible for its durability.
>
> In implementing this role, the judiciary acts within the restraint imposed by this structure. Any activitism by the judiciary should be confined to adopting procedures and conducting court in a manner that promotes confidence in the system and fairness in the resolution of disputes.

Financial Statement
Paul and Susan Niemeyer & Children
August 31, 1987

Assets

Cash - T. Rowe Price Prime Reserve	$500
Cash - Bank	13,000
Securities (per attached schedule)	52,040
Children's securities (per attached schedule)	36,350
Real Property - residence	350,000
Real Property - second home (1/2 interest)	80,000
Boat (1/2 interest)	2,000
Law Partnership - capital	50,000
Law Partnership - interest, on withdrawal	500,000
Keogh Account (as at 9/30/86)	230,000
Life Insurance - estimated cash value less loans	10,000
Art Collection	87,000
Personal Effects	75,000
Automobiles - 1987 Honda	14,000
1987 Honda	8,000
1983 Buick	7,000
TOTAL:	$1,514,890

Liabilities

1st Mortgage - residence (Municipal Savings Bank)	$159,000
1st Mortgage - second home (1/2 interest) (First United National Bank & Trust)	14,000
2nd Mortgage - second home (1/2 interest) (First United National Bank & Trust)	1,700
Home Equity line of credit (The Bank of Baltimore)	5,500
TOTAL:	$180,200

Securities Schedule

10 Units - First Trust Municipal bonds-series 117	$ 10,000
50 units - Nuveen Tax Exempt-Trust 297	5,000
Provident Savings Bank C.D.	1,000
IRA (PVN) - Merrill, Lynch Reserve Money Fund	9,000
IRA (SKN) - Merrill, Lynch Reserve Money Fund	1,000
T. Rowe Price Short Intermediate Bond Fund	13,500
P&M Investors 1983*	-
P&M Investors 1984*	-
P&M Investors 1985*	-
Ray Road Associates*	-
200 units - Winthrop Financial	5,000
200 shares - Polk Audio	1,600
13 shares - AT&T	440
Merrill, Lynch Liberty All Star Fund	4,500
TOTAL	$ 52,040

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* Tax Shelter investments - I believe that they are economic deals with values that exceed amounts being paid in, but that will not be determined until future years.

Children's Securities

Jonathan (J), Peter (P), Christopher (C)

32 shares - IBM (J, P & C)	$ 5,500
T. Rowe Price Equity Income Fund (P)	7,700
50 shares - Loyola Cap. (P)	750
100 shares - Matrix Corp. (P)	900
Dean, Witter stripped treasury bonds (1992) and 1993) (P)	6,500
Merrill, Lynch stripped treasury bonds (1993 and 1994) (C)	7,000
Paine, Webber stripped treasury bonds (1995 and 1996) (C)	8,000
TOTAL:	$36,350

Income Statement

	1985	1986	1987*
Fees from law firm	$240,815	$285,181	$285,000*
Wages (Susan)	1,068	660	—
Interest	983	2946	*
Dividends	–	316	*
Tax refund	–	3014	—
Capital gains	803	86	*
Book royalties	2224	655	*
Miscellaneous	—	124	—

* Fees from partnership for 1987 (which will be determined at 9/30/87) are estimated to be similar in amount to those in 1986; wages for Susan will be $0; the total for the remainder of the items are estimated to be in the same range as 1986, except that there will be no tax refund and capital gains may be higher.

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

CHAIRMAN
and Member-at-Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Gene W. Lafitte
One Shell Square
50th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One IBM Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA CIRCUIT & FEDERAL CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF DIRECTOR
Wantland L. Sandel, Jr.
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5685

STAFF ASSISTANT
Diane Livingston
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5701

September 14, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: PAUL V. NIEMEYER
United States District Court
for the District of Maryland

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Paul V. Niemeyer for appointment as Judge of the United States District Court for the District of Maryland.

A substantial majority of our Committee is of the opinion that Mr. Niemeyer is "Well Qualified" for this appointment. The majority found him to be Exceptionally Well Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

RICHARD J. ARCARA

Birth:	June 6, 1940	Buffalo, New York
Legal Residence:	New York	
Marital Status:	Married	Gwendolyn Oliver Arcara no children
Education:	1958 - 1962	St. Bonhventure University B.A. degree
	1962 - 1965	Villanova University Law School J.D. degree
Bar:	1966	New York
Military Service:	1966 - 1968	United States Army
Experience:	1968 - 1969	Lipsitz, Green, Fahringer, Roll, Schuller & James Associate
	1969 - 1973	Assistant U.S. Attorney Western District of N.Y.
	1973 - 1974	First Assistant U.S. Attorney Western District of N.Y.
	1975 - 1981	United States Attorney Western District of New York
	1981 - 1982	Senate of the State of N.Y. Assistant Counsel to the Committee on Crime and Corrections
	1981 - 1982	Stamm, Keefe & Murray Associate
	1982 - Present	Erie County District Attorney
Office:	25 Delaware Avenue Buffalo, New York 14202 (716) 855-2424	
Home:	276 Rivermist Drive Buffalo, New York 14202	

To be United States District Judge for the Western District of New York

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PARTS I, II, III, IV

Submitted by:

Richard J. Arcara
Judicial Nominee
United States District Court
Western District of New York

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	Appendix	(Under separate cover)

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

RICHARD JOSEPH ARCARA

2. Address: List current place of residence and office address(es).

(home) 276 Rivermist Drive
Buffalo, New York 14202

(office) 25 Delaware Avenue
Buffalo, New York 14202

3. Date and place of birth.

June 6, 1940
Buffalo, New York

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married
Gwendolyn Ruth Oliver
Executive Recruiter
Self-employed

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

St. Bonaventure University
September, 1958 to June, 1962
B.A. Degree in History, June, 1962

Villanova University Law School
September, 1962 to June, 1965
J.D. Degree in Law, June, 1965

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Legal Aid Bureau
Walbridge Building
Buffalo, New York 14203
Law Clerk, Appeals Bureau
August, 1965 to December, 1965

United States Army
January, 1966 to January, 1968

Lipsitz, Green, Fahringer,
Roll, Schuller & James
Attorneys at Law
One Niagara Square
Buffalo, New York 14202
Associate Attorney, Litigation Department
January, 1968 to July, 1969

6. (continued)

Assistant United States Attorney
Western District of New York
502 U.S. Court House
Buffalo, New York 14202
August, 1969 to April, 1973

First Assistant United States Attorney
Western District of New York
502 U.S. Court House
Buffalo, New York 14202
May, 1973 to December, 1974

United States Attorney
Western District of New York
502 U.S. Court House
Buffalo, New York 14202
January, 1975 to June, 1981

Stamm, Keefe & Murray
Attorneys at Law
Ellicott Square Building
Buffalo, New York 14203
July, 1981 to December, 1981
Associate Attorney

Senate of the State of New York
Assistant Counsel to the Committee on
Crime and Corrections
Albany, New York
July, 1981 to December, 1981

Erie County District Attorney
25 Delaware Avenue
Buffalo, New York 14202
January, 1982 to Present

National District Attorneys Association,
1033 North Fairfax Street, Suite 200
Alexandria, Virginia 22314
President, January, 1987 to present

New York State District Attorneys Association
Saratoga County District Attorneys Office
Municipal Center
Ballston Spa, New York 12020
President-Elect, June, 1986 to present

American Prosecutors Research Institute
1033 North Fairfax Street, Suite 200
Alexandria, Virginia 22314
Chairman, Board of Directors,
January, 1987 to present

National Association of Former United
States Attorneys
1188 S Merchants Plaza
South Tower
Indianapolis, Indiana 46204
Board of Directors
April, 1985 to present

Judges and Police Executives Conference
of Erie County
P.O. Box 142 Hiler Station
Buffalo, New York 14223
Past President (1986)

6. (continued)

Niagara Frontier Vocational Rehabilitation Center
100 Leroy Avenue
Buffalo, New York
Past Director, 1980 to 1986

Rivermist Homeowners Association.
One Towne Center
Amherst, New York 14226
President, 1983 to present

100 Club of Buffalo, Inc.
483 Delaware Avenue
Buffalo, New York 14202
Board of Directors
1982 to present

Erie Community College
Main Street and Youngs Road
Williamsville, New York 14221
Criminal Justice Advisory Board
1982 to present

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes
Date of entry: January 8, 1966
Date of discharge: January 7, 1968
United States Army, Military Police Corp.
Captain
- January, 1966 to April, 1967 - Served as Provost Marshall for 23rd Direct Support Group, Korea and also Company Commander
- May, 1967 to January, 1968 - Provost Marshall, Edgewood Arsenal, Maryland

Service No.: 05 012 385
Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

President of the National District Attorneys Association, January 1, 1987 to Present;

American Bar Association, Criminal Justice Section Committee Member, 1983; appointed to ABA Ad-Hoc Committee on the Bail Reform Act of 1984 in 1986 and as Vice-Chair in 1987; appointed to the Prosecution Function Committee in 1986;

Appointed by New York State Governor Mario Cuomo to the New York State Drug Enforcement Task Force and to Chair the Legislation Committee of that Task Force, September, 1986;

9. (continued)

President-Elect of the New York State District Attorneys Association, June, 1986 to present;

Chairman, Board of Directors, American Prosecutors Research Institute, January 1, 1987 to present;

Board of Directors, National Association of Former United States Attorneys, April, 1985 to present;

New York State Bar Association, Criminal Justice Section, 1985;

Western New York Trial Lawyers Association, member;

Erie County Bar Association, member; served on various committees; i.e., federal practice committee, bench/bar committee, law day committee, criminal law committee;

Past President (1986) and current member, Judges and Police Executives Conference of Erie County.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations to which I belong which are active in lobbying before public bodies are:

National District Attorneys Association;
American Bar Association;
New York State Drug Enforcement Task Force;
New York State District Attorneys Association;
Executive Working Group for Federal, State and Local Prosecutorial Relations;
American Prosecutors Research Institute;
New York State Bar Association;
Western New York Trial Lawyers Association;
Erie County Bar Association

All other organizations to which I belong are:

National Association of Former United States Attorneys;
Judges and Police Executives Conference of Erie County;
100 Club of Buffalo;
American Legion, Adam Plewacki Post No. 799;
Buffalo Yacht Club;
Rivermist Homeowners Association;
Albright-Knox Art Gallery Members Society;
Buffalo Zoological Society;
Erie Community College Criminal Justice Advisory Board;
National Association for the Advancement of Colored People;
National Conference of Christians and Jews

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to Practice.

Supreme Court of the United States
October 15, 1979

11. (continued)

United States Court of Appeals for
the Second Circuit
January 19, 1970

United States District Court for the
Western District of New York
June 24, 1968

Supreme Court of the State of New York,
Fourth Department
March, 1966

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Photocopies of the following are attached hereto as Attachment A:

Statement to Senate Judiciary Committee on Money Laundering, September, 1985 and press report about same;

Statement to House Crime Subcommittee on Money Laundering, October, 1985;

Statement to United States Sentencing Commission, December, 1986 and press report about same;

Statement to United States Sentencing Commission, March, 1987;

Statement to House Subcommittee on Select Education on the Children's Justice and Assistance Act, April, 1987.

Additionally, in the regular course of my duties as United States Attorney and as District Attorney, I have addressed numerous citizen and business groups on a wide range of topics including proposed legislation, recent court decisions, individual rights, law enforcement policy matters and on various aspects of the criminal justice system. If more specific information is necessary, I will be pleased to provide additional details.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent
June 23, 1987.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

n/a

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

n/a

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Erie County District Attorney
January, 1982 to Present
Elected to four year term in November, 1981
Re-elected to four year term in November, 1985

United States Attorney
for the Western District of New York
January, 1975 to June, 1981
Court appointment, January, 1975
Presidential appointment, December, 1975

First Assistant United States Attorney
Western District of New York
May, 1973 to December, 1974
Appointed, May, 1973

Assistant United States Attorney
Western District of New York
August, 1969 to April, 1973
Appointed, August, 1969

I have never been an unsuccessful candidate for public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after your graduation from law school, including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.

2. whether you practiced alone, and if so, the addresses and the dates.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Legal Aid Bureau
Walbridge Building
Buffalo, New York 14203
Law Clerk, Appeals Bureau
August, 1965 to December, 1965

(United States Army
January, 1966 to January, 1968)

Lipsitz, Green, Fahringer,
Roll, Schuller & James
Attorneys at Law
One Niagara Square
Buffalo, New York 14202
Associate Attorney, Litigation Department
January, 1968 to July, 1969

Assistant United States Attorney
Western District of New York
502 U.S. Court House
Buffalo, New York 14202
August, 1969 to April, 1973

First Assistant United States Attorney
Western District of New York
502 U.S. Court House
Buffalo, New York 14202
May, 1973 to December, 1974

United States Attorney
Western District of New York
502 U.S. Court House
Buffalo, New York 14202
January, 1975 to June, 1981

Stamm, Keefe & Murray
Attorneys at Law
Ellicott Square Building
Buffalo, New York 14203
July, 1981 to December, 1981
Associate Attorney

Senate of the State of New York
Assistant Counsel to the Committee on
Crime and Corrections
Albany, New York
July, 1981 to December, 1981

17. (continued)

Erie County District Attorney
25 Delaware Avenue
Buffalo, New York 14202
January, 1982 to Present

b. 1. What has been the general character of your practice, dividing it into periods with dates, if its character has changed over the years?

General practice of law, principally civil and criminal litigation. January, 1968 to July, 1969.

General representation of federal agencies in civil and criminal matters involving investigative, trial and appellate proceedings. August, 1969 to June, 1981.

The investigation, prosecution and appeal of all criminal and a number of civil cases on behalf of the People of the State of New York, County of Erie. January, 1982 to present.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

From August, 1969 to June, 1981, as an Assistant United States Attorney, First Assistant United States Attorney and as United States Attorney, I represented the interest of the United States Government. My practice was generally criminal and civil litigation, as well as appellate practice. Clients were all federal agencies.

From January 1, 1982 to the present, as Erie County District Attorney, I am the chief prosecutor for all crimes and offenses occurring in Erie County. I represent the interest of the People of the State of New York. My practice is generally administrative, supervising both criminal and civil litigation, as well as appellate practice.

c. 1. Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving the dates thereof.

During the period January, 1975 through the present, as United States Attorney and as District Attorney, I have appeared in court occasionally. Prior to then, while employed in private practice, as an Assistant United States Attorney and as First Assistant United States Attorney, I appeared in court regularly.

The variance in the frequency of my appearances is as a result of the nature of my employment and the duties and responsibilities for each position I have held. Specifically, during the years 1968 through 1974, while employed in private practice, as an Assistant United States Attorney and as First Assistant United States Attorney, I maintained an active civil and criminal trial and appellate caseload. From 1975 to the present, my practice has been generally administrative; supervising both criminal and civil litigation, as well as appellate practice.

17. (continued)

Most recently, I appeared before the United States Supreme Court on three occasions for the argument of three cases which my office petitioned to said Court. On one occasion, I personally argued the appeal and on the other two, I appeared as co-counsel with the Chief of my Appeals Bureau.

2. What percentage of these appearances was in:

(a) federal courts;
(b) state courts of record;
(c) other courts.

(a) federal courts - approximately 80%
(b) state courts - approximately 20%
(c) other courts - 0

3. What percentage of your litigation was:

(a) civil;
(b) criminal.

(a) civil - approximately 20%
(b) criminal - approximately 80%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

The number of cases which I tried to verdict/judgment were approximately 30 as sole and chief counsel and 2 as associate counsel.

5. What percentage of these trials was:

(a) jury;
(b) non-jury.

(a) jury - approximately 80%
(b) non-jury - approximately 20%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

18. (continued)

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Ten significant litigated matters are:

Richard J. Arcara, District Attorney of Erie County vs. Cloud Books, Inc., et al., ___ U.S. ___, 106 S.Ct. 3172 (1986).

This case was on writ of certiorari to the New York Court of Appeals in the Supreme Court of the United States. (OCTOBER TERM 1985). The question presented was as follows:

> Where it is alleged that acts of masturbation, fellatio and prostitution are occurring on a premises denominated as a bookstore, does the First Amendment operate to immunize such premises from closure as a nuisance under New York State's Public Health Law?

The significance of the case is the decision of the United States Supreme Court that the First Amendment is not implicated by the enforcement of a public health regulation of general application against the physical premises in which books are sold.

I represented the People of the State of New York as co-appellate counsel in this case which was successfully argued in the United States Supreme Court and resulted in reversal of the New York Court of Appeals. It should be noted that, although I did not argue this case before the Supreme Court, I worked with my Appeals Bureau staff in the preparation of the brief.

The case was argued on April 29, 1986. The majority opinion was delivered by the Honorable Warren Earl Burger and the date of decision was July 7, 1986

Counsel for the respondents was Paul J. Cambria, Jr., Esq., One Niagara Square, Buffalo, New York 14202, telephone number (716) 849-1333.

18. (continued)

New York vs. P.J. Video, Inc., d/b/a/ Network Video and James Erhardt, ___ U.S. ___, 106 S.Ct. 1610 (1986).

This case was on writ of certiorari to the New York Court of Appeals in the Supreme Court of the United States. (OCTOBER TERM 1985). The questions presented were as follows:

1. Did the New York Court of Appeals err in determining that the United States Constitution requires that a warrant authorizing the evidentiary seizure of allegedly obscene material be supported by a factual showing establishing more than probable cause?

2.. Did the New York Court of Appeals misinterpret the decisions of the United States Supreme Court in the P.J. Video, Inc. case by applying a standard pertinent only to seizures shown to constitute a prior restraint?

The significance of this case is the decision of the United States Supreme Court in which it was held that an application for a warrant authorizing the seizure of materials presumptively protected by the First Amendment should be evaluated under the same standard of probable cause used to review warrants generally and that no higher standard of probable cause is required simply because the object of the search is allegedly obscene material.

I represented the People of the State of New York as co-appellate counsel in this case which was successfully argued in the United States Supreme Court and resulted in reversal of the New York Court of Appeals and remand to that Court. It should be noted that, although I did not argue this case before the Supreme Court, I worked with my Appeals Bureau staff in the preparation of the brief.

The case was argued on March 4, 1986. The majority opinion was delivered by the Honorable William H. Rehnquist and the date of decision was April 22, 1986.

Counsel for the respondents was Paul J. Cambria, Jr., Esq., One Niagara Square, Buffalo, New York 14202, telephone number (716) 849-1333.

State of New York [illegible] Robert Uplinger and Susan Butler, 467 U.S. 246 (198[illegible]

This case was on writ of certiorari to the New York Court of Appeals in the Supreme Court of the United States. The question presented was as follows:

1. Where public solicitations to engage in deviate sexual acts are either unprotected or minimally protected by the First Amendment to the Constitution, and where the State has a compelling interest in the protection of its citizenry from public invitations to engage in abnormal sexual behavior which have been legislatively perceived as annoying or harassing, does New York Penal Law Section 240.35 subd. 3 which prohibits loitering for the purpose of engaging or soliciting another to engage in deviate sexual intercourse or other deviate sexual activities represent a constitutionally valid exercise of the State's power to control public order?

18. (continued)

The significance of this case was the resolving of the question of the constitutionality of New York Penal Law Section 240.35 Subd. 3. In connection therewith, the United States Supreme Court granted certiorari to review the decision of the New York Court of Appeals but after full briefing and oral argument, dismissed the writ as improvidently granted.

I represented the People of the State of New York as chief appellate counsel in argument before the United States Supreme Court.

The case was argued on January 18, 1984. The per curiam opinion, Justices White, Burger, Rehnquist and O'Connor dissenting, was delivered May 30, 1984.

Counsel for the respondents was William H. Gardner, Esq., 1800 One M&T Plaza, Buffalo, New York 14203, telephone number (716)856-4000

In Matter of Attica Inmates vs. Nelson Rockefeller, Governor, et al., Docket Nos. Misc. Cr. A-E (W.D. New York 1973)

These five cases arose as the result of the Attica Prison riots in 1971. Five inmates filed a federal civil rights action and in conjunction therewith, sought a preliminary injunction against Attica prison guards. There was a denial of the injunction by decision of the trial court which was reversed by the Second Circuit Court of Appeals in 1972. Following granting of the injunction, Attica inmates filed prosecution petitions seeking criminal contempt action against approximately twenty prison guards. Hearings were conducted to determine whether there was sufficient probable cause for formal criminal contempt charges. The United States Attorney was court designated to represent the inmates in connection with the hearings.

The significance of these cases is their high profile nationally and the sensitivity of the subject matter and issues involved.

I represented the United States of America and the inmates at the hearings which resulted in four no probable cause and one probable cause determination.

The proceedings numbered approximately forty days and were conducted in the Spring of 1973 through June of 1973. In November, 1973, the decision of the Honorable Edmund F. Maxwell, United States Magistrate, was rendered.

Counsel for the accused was John H. Stenger, Esq., 800 Norstar Building, Buffalo, New York 14202, telephone (716) 856-0600.

18. (continued)

- United States of America vs. James Jerome Astolas, William Dallas Bermel and Daniel James Edin, 487 F.2d 275 (2nd Cir. 1973).

This case involved conspiracy and the theft of three trailers containing loads of automotive parts and supplies which constituted an interstate shipment of freight.

The significance of this case is its resolving a question of first impression with respect to a perceived loophole in Title 18 U.S.C. §659. The decision established when interstate shipments commence and when they terminate for purposes of said statute.

I represented the United States of America as chief trial attorney in this jury trial which resulted in guilty verdicts as to all defendants. I also was appellate counsel when this case was affirmed by the Second Circuit Court of Appeals.

The trial period was from March 6, 1973 through March 20, 1973 in the Federal District Court for the Western District of New York before the Honorable John O. Henderson (deceased).

Co-counsel for the defendants were Harold J. Boreanaz, Esq., 736 Brisbane Building, Buffalo, New York 14203, telephone number (716) 854-5800 and the Honorable Edgar C. NeMoyer, Court of Claims, 125 Main Street, Buffalo, New York 14203, telephone number (716) 847-3433.

- United States of America vs. Walter Posnjak, 457 F.2d 1110 (2nd Cir. 1972).

This case involved conspiracy, possession, transferring and engaging in the business of dealing in explosive materials, to wit: 4,100 sticks of dynamite.

The significance of this case is its resolving the question whether the definition of "destructive device" in the National Firearms Act, 26 U.S.C. 5801 et seq. and the Gun Control Act of 1968, 18 U.S.C. §921 et seq. included "commercial dynamite" and whether the sale of same under certain conditions was intended to be prohibited by said Acts at the time of their enactments. The decision established that "commercial dynamite" was not included in the aforementioned definition and that its sale was not proscribed under said Acts. Consequently, the judgment was reversed.

I represented the United States of America as chief trial attorney in this jury trial which resulted in the conviction of defendant Posnjak. I also was appellate counsel when this case was reversed by the Second Circuit Court of Appeals.

The trial period was approximately two weeks in the Federal District Court for the Western District of New York before the Honorable John T. Curtin. Counsel for the defendant was Theodore O'Shea, Esq. (deceased).

18. (continued)

- United States of America vs. Edward Lee Thomas, Docket No. Cr. 1972-99 (W.D. New York 1972).

This case involved the robbery of a federally insured bank.

The significance of this case was the favorable resolution of many evidentiary issues involving the admissibility of defendant's statements, witness identifications, and the use of expert handwriting and fingerprint testimony.

I represented the United States of America as chief trial attorney in this jury trial which resulted in the conviction of defendant Thomas.

The trial was approximately eight days in duration in the Federal District Court for the Western District of New York before the Honorable John O. Henderson (deceased).

Counsel for the defendant was Michael McGee, Esq., 200 Summer Street, Buffalo, New York 14222 (716) 883-7272.

United States of America vs. Joseph Tripi, Docket No. Cr. 70-66 (W.D. New York 1972).

This case involved substantial tax evasion in multiple years.

The significance of this case was the complex nature of the tax issues presented and the voluminous details of the theory of proof.

I represented the United States of America as chief trial attorney in this jury trial which resulted in a not-guilty verdict following two days of jury deliberations.

The trial was approximately three weeks in duration in the Federal District Court for the Western District of New York before the Honorable John T. Curtin.

Counsel for the defendant was Harold J. Boreanaz, Esq., 736 Brisbane Building, Buffalo, New York 14203 telephone number (716) 854-5800.

United States of America vs. Geary Lofton, Docket No. Cr. 1970-60 (W.D. New York 1970).

This case involved the robbery of a federally insured bank.

The significance of this case was the difficulty of prosecution as a result of numerous belligerent, fearful and hostile witnesses.

I represented the United States of America as chief trial attorney in this jury trial which resulted in the conviction of defendant Lofton. I also was appellate counsel when this case was affirmed by the Second Circuit Court of Appeals without written opinion.

18. (continued)

The trial was approximately two weeks in duration in the Federal District Court for the Western District of New York before the Honorable John O. Henderson (deceased).

Counsel for the defendant was Paul I. Birzon, Esq. 360 Statler Towers, Buffalo, New York 14202 (716) 847-6060.

United States of America v. John Robinson, Bertha Robinson, Joseph Greene and James C. Barnett, a/k/a "J.C." Barnett, Docket No. 9061-C (W.D. New York 1970).

This case involved a multiple (12) count indictment charging the defendants with possessing and transferring non-tax paid distilled spirits in violation of Title 26, U.S.C., §5205(a)(2).

The significance of this case included the issue of whether willfulness was an essential element of the offense and needed to be included in the charge to the jury. The trial took place approximately five years after the return of the indictment resulting in chain of evidence problems and missing witnesses. It was the first trial brought under said statute in the Western District of New York. All defendants were found guilty and there was no appeal.

The trial period was approximately two weeks in the Federal District Court for the Western District of New York before the Honorable John O. Henderson (deceased).

Co-counsel for defendants were Paul Birzon, Esq., 360 Statler Towers, Buffalo, New York 14202 (716) 847-6060 and John Condon, Jr., Esq., 300 Statler Towers, Buffalo, New York 14202 (716) 856-2183.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In describing the most significant legal activities which I have pursued in my professional career, I would note that for the past eighteen years I have served in the public sector as an Assistant United States Attorney, First Assistant United States Attorney, the United States Attorney for the Western District of New York and District Attorney for Erie County. As such, I have directly, or indirectly through my assistants, handled a large number of criminal and civil matters which I believe may qualify as "significant legal activities."

In describing the nature of my participation in the matters selected, I will use the terms initiate, coordinate and supervise. By initiate, I mean that it was essentially my decision to commence an investigation, rather than being requested to do so by a governmental agency. By coordinate, I mean that multi-agencies and investigative units were involved in the same or related investigation(s) and that I, individually or jointly, directed it through a hands-on approach so as to avoid duplication of efforts. By supervise, I mean that I would personally oversee, control and direct the investigation and subsequent litigation.

1) In 1973, while serving as an Assistant United States Attorney, I represented the interests of Attica prison inmates at five probable cause hearings held in Buffalo, New York. Approximately 40 days of hearings were conducted to determine if there was sufficient evidence to bring criminal contempt charges against the Attica Prison guards for alleged reprisals they took against prisoners following the prison riots which occurred at Attica in 1971. The United States Magistrate found probable cause in one case and no probable cause in the remaining four cases. For additional details, see pertinent response to question 18 herein, repeated at appendix - tab 1.

2) In March of 1975, in a joint investigation with the New York State Special Prosecutor for Nursing Home Investigations, I supervised a federal grand jury investigation of certain nursing homes in Western New York. In the first of several criminal cases which resulted, three defendants were indicted on charges involving conspiracy to defraud the United States of over $100,000 of Medicaid funds through the use of "no show" jobs; using public funds for private purposes; operating a wholesale grocery business with food supplies belonging to the nursing home; billing improper expenses to the state and federal government for Medicaid reimbursement; and receiving kickbacks in connection with favored patient care. All three defendants were convicted. I believe that the convictions for receiving kickbacks were the first obtained under the applicable federal statute prohibiting kickbacks for favored care in federally funded facilities. For additional details, see related newspaper articles, appendix - tab 2.

19. (continued)

3) Between 1976 and 1979, I coordinated and supervised the federal role in six federal/state "sting" operations involving charges from arson-for-profit to trafficking in stolen goods. As a result of the joint investigations, charges were filed in federal and state courts involving over 400 defendants including police officials, military personnel, organized crime figures, businessmen and professionals. The overall conviction rate was approximately 95% and the value of the stolen property recovered was approximately 3.1 million-dollars. One of the more significant items recovered was Rembrandt's "The Rabbi" which had been stolen from the Bonnat Museum in Bayonne, France where it was on loan from the Louvre. For additional details, see related newspaper articles, appendix - tab 3.

4) In March, 1976, I supervised a federal grand jury investigation which resulted in the indictment and conviction of an alleged presidential candidate who was seeking federal election campaign funds from the Federal Election Commission. The indictment charged the defendant with attempting to obtain $100,000 through the use of an application containing false information. I understand that this indictment and conviction were the first under the applicable Election Law. For additional details, see related newspaper article, appendix - tab 4.

5) In July of 1976, I supervised an 18-month federal grand jury investigation involving allegations that a prominent local attorney who was a former county legislator and certain of his clients defrauded insurance companies in automobile accident cases. The investigation was the result of a request by the Insurance Crime Prevention Institute and the United States Postal Inspector's Office. Indictments were returned charging conspiracy and defrauding insurance companies of approximately $125,000. The attorney and all but one of his clients were convicted. For additional details, see related newspaper articles, appendix - tab 5.

6) In the Fall of 1976, I initiated, coordinated and supervised a lengthy FBI and federal grand jury investigation into the operation of the City of Buffalo Human Resources Department. That department was responsible for administering the federal Comprehensive Employment and Training Act (CETA) program at the local level. The investigation followed widespread allegations of possible violations of the White Slave Traffic Act, coercion of females, conspiracy to defraud the government, embezzlement, the misuse of federal funds, false statements, theft, the influence of patronage politics and the failure to create meaningful jobs as required under the terms of the Act. Although no indictments were returned, the federal grand jury issued a 32-page report in October of 1978 which was critical of the manner in which the Buffalo Human Resources Department conducted its affairs. The grand jury concluded that abuses and mismanagement were widespread and it made specific recommendations for corrective measures. For additional details, see related newspaper articles, appendix - tab 6.

19. (continued)

7) In January of 1977, after a major winter snow storm which drew considerable national attention, President Jimmy Carter declared Western New York a federal disaster area and made available 25 million dollars in federal food stamps. In connection with their distribution, there were widespread reports of fraud and black marketing.

I initiated, coordinated and supervised an investigation conducted by the United States Department of Agriculture, the Erie County Sheriff and a federal grand jury. Indictments were returned charging 27 individuals with fraudulently obtaining, receiving and selling federal food stamps valued at approximately $215,000. All 27 defendants were convicted. I believe these were the first federal convictions involving the black marketing and fraudulent obtaining of food stamps.

In the exercise of my prosecutorial discretion, rather than seeking additional indictments of less culpable individuals, I sent approximately 1,300 letters requesting repayment from those others whom the investigation revealed may have improperly received a total of over $200,000 in food stamps. Approximately 200 individuals responded and agreed to repay $36,500. The remainder of the cases were referred to Erie County for administrative or civil collection. For additional details, see related newspaper articles, appendix - tab 7.

8) In July of 1977, I coordinated and supervised an investigation conducted by the FBI, the Environmental Protection Agency (EPA) and a federal grand jury into allegations of false reporting by the Olin Corporation as to the amounts of toxic discharges it made into the Niagara River between 1970 and 1977. A 28-count indictment was returned against the Olin Corporation, its former Niagara Falls chemical plant manager and two other former plant employees. It charged the defendants with falsely reporting that Olin's toxic discharges of metallic mercury were within the legal limit. The corporation and two of its employees were convicted. For additional details, see related newspaper articles, appendix - tab 8.

9) In June of 1978, I supervised an investigation conducted by the Federal Bureau of Investigation to identify individuals in Western New York who may have been collecting welfare benefits while gainfully employed. The investigation utilized computers to match welfare records with the employment records of various employers. Over 2,000 suspects were identified and, of that group, 492 were public employees who were receiving benefits to which they were not entitled.

In exercising my prosecutorial discretion, I decided to proceed civilly and referred the cases to the Erie County Department of Social Services for civil collection. For additional details, see related newspaper articles, appendix - tab 9.

10) In July of 1978, I supervised investigations conducted by the Veterans Administration, the General Accounting Office and the Department of Health, Education and Welfare into student loans.

As a result of these investigations, it was determined that 129 cases were identified in which veterans, claiming to be students, received $161,257 in benefits to which they were not entitled. In addition, approximately 100 cases were identified, which involved defaulted loans totaling over $75,000.

19. (continued)

Consequently, I filed over 200 civil actions which resulted in a substantial recovery to the federal government. For additional details, see related newspaper articles, appendix - tab 10.

11) In August of 1978, a federal judge ruled that both the City of Buffalo Police and Fire Departments discriminated against minorities and women in their respective hiring practices. I took immediate action to expedite compliance with the judge's order and sought a prompt and concrete plan to expeditiously integrate Buffalo's Police and Fire Departments. For additional details, see related newspaper articles, appendix - tab 11.

12) In August of 1978, there were widespread allegations that Hooker Chemical and Plastics Corporation and other companies had dumped almost 200,000 tons of contaminants at various dump sites in the Niagara Falls area, including the Love Canal. This matter was the focus of extensive national attention. I sought reports from the Environmental Protection Agency (EPA), the Natural Resources Division of the Department of Justice and the Department of Health Education and Welfare for the purpose of determining whether Hooker had civil or criminal liability for its role in that chemical contamination. In addition, I took the initiative and coordinated a number of federal and state officials in determining the appropriate action to take against the Corporation.

    On behalf of the Department of Justice, I filed a 124 million-dollar lawsuit against Hooker and its related corporations. After extensive pre-trial proceedings, a satisfactory settlement was reached. For additional details, see related newspaper articles, appendix - tab 12.

13) In July of 1979, I coordinated and supervised a 19-month federal narcotics investigation of an international smuggling ring that brought heroin estimated to be worth 330 million-dollars into the United States. The global network for the heroin included suppliers in Italy, wholesalers in Canada and cutters, suppliers and distributors in the United States. This investigation involved law enforcement agencies in Canada and Italy, the United States Drug Enforcement Agency, the Erie County Sheriff's Department and a local police department. A federal grand jury returned indictments against 14 individuals and all the defendants who were apprehended were convicted of various narcotics charges. For additional details, see related newspaper articles, appendix - tab 13.

14) In August of 1979, I filed an 8.6 million dollar lawsuit against ITT's Aimco Division to recover duties and penalties owed the United States Customs Service as a result of Aimco's claiming that it was importing used automobile parts into the United States from Canada when, in fact, they were new automobile parts subject to a higher customs import duty. The lawsuit was the result of a request submitted to me by the United States Customs Service following marathon attempts to settle and resolve the dispute without the necessity for litigation. Following two years of combative pre-trial negotiations, a settlement accord was reached between the parties. For additional details, see related newspaper article, appendix - tab 14.

19. (continued)

15) During the international gasoline shortage of 1979, and amid extensive local media reports of price fixing and black marketing of gasoline, I requested the Department of Energy Conservation and the FBI to conduct an immediate and vigorous investigation into the Ashland Oil Company relating to its pricing and marketing practices.

Following the year-long investigation which I initiated and supervised, a federal grand jury returned an eight-count indictment against a local businessman who owned and operated numerous gasoline stations in Western New York. The charges included scheming to control area gas prices, obtaining increased allocations of gasoline by means of closed and non-existent gasoline stations, failing to make gasoline allocations in accordance with government regulations and mail fraud as a result of mailing false reports to the United States Department of Energy. I believe that the subsequent conviction was the first under the applicable federal statute. For additional details, see related newspaper articles, appendix - tab 15.

16) In December of 1979, I initiated and supervised a 27-month federal grand jury investigation which resulted in indictments against two former assistant district attorneys and five police officers for conspiracy and civil rights violations. The charges included the manipulation and fabrication of evidence in three state organized crime murder trials, an arson trial, a robbery trial and more than one dozen preliminary hearings and grand jury proceedings involving 16 defendants.

The inherent sensitivities of these cases required me to personally brief the Assistant Attorneys General of the Criminal Division and the Civil Rights Division of the Department of Justice and to obtain their approval before charges could be considered by a grand jury. Nine individuals were indicted and eight were convicted. These indictments and convictions were the first brought under the Civil Rights statute for fabricating evidence used in a criminal prosecution. For additional details, see related newspaper articles, appendix - tab 16.

17) In May of 1981, I coordinated the investigation by the federal Bureau of Alcohol, Tobacco and Firearms, the Rochester Police Department and the Monroe County Sheriff's Department resulting in the arrest of 10 fugitive members of the Pennsylvania MOVE Organization who were residing in Rochester, New York. This undertaking was particularly sensitive because 33 months earlier in Philadelphia, there had been a deadly confrontation between MOVE members and the police department wherein one police officer was killed and seven were injured. All of the Rochester arrests were accomplished without incident. For additional details, see related newspaper articles, appendix - tab 17.

18) In January of 1982, following revelations made at the criminal trial of a police lieutenant, I initiated and supervised an 11-month Erie County grand jury investigation into alleged irregularities and deficiencies in the administration and operation of a town police department. This investigation resulted in the grand jury issuing a report critical of the management and operations of the police department. It made specific recommendations for administrative changes in the department's operation and procedures. For additional details, see related newspaper articles, appendix - tab 18.

19. (continued)

19) In February of 1983, I coordinated and supervised the state's role in a three-week federal/state undercover investigation which resulted in the indictment and conviction of three individuals who comprised a major fencing ring in the Western New York area. Among the stolen items recovered were three 16th-Century Tschinke wheel lock rifles which officials of the Metropolitan Museum of Art in New York City said were worth at least $100,000 but are considered priceless because they are irreplaceable. Two 16th-Century "long guns" and a matched pair of 19th Century rifles were also recovered and were valued at a minimum of $250,000. For additional details, see related newspaper articles, appendix - tab 19.

20) In March of 1983, I supervised a four-month Erie County grand jury investigation into allegations that an attorney, who was a village justice, was engaged in professional and official misconduct. A 41-count indictment was returned charging the defendant with official misconduct while a village justice, misappropriation of village and client funds totaling more than $115,000, and forgery of a Surrogate Court's decree. The defendant pleaded guilty to all charges and resigned as a village justice and as a member of the New York State Bar. For additional details, see related newspaper articles, appendix - tab 20.

21) In July of 1983, a ten year old girl was abducted and sexually assaulted in Buffalo, New York. The child's father sought out the assailant in vigilante fashion and stabbed him in front of a local television crew which was videotaping on the scene. The stabbing was broadcast nationally and became a celebrity case. The assailant was indicted and convicted on charges of kidnapping, burglary and sodomy. The father was charged with assault and pleaded guilty to a reduced charge. For additional details, see related newspaper articles, appendix - tab 21.

22) Commencing in November of 1983 through 1985, following widespread media allegations concerning questionable charitable fundraising practices and organizations in Western New York, I initiated and supervised two major Erie County grand jury investigations.

One investigation involved an organization which engaged in fundraising activities allegedly for charitable purposes under the auspices of a prominent professional football player from the Western New York Area. After a year-long investigation, the grand jury filed a 62-page report which was critical of the manner in which the organization operated, and made specific recommendations for corrective action. For additional details, see related newspaper articles, appendix - tab 22.

19. (continued)

The second investigation resulted in the indictment and conviction of a local employer for his misappropriation of employee charitable withholdings for the United Way of Western New York. As a result, the United Way implemented changes in its internal and corporate reporting procedures to safeguard and identify individual contributions given by employees to their employers for the United Way. For additional details, see related newspaper articles, appendix - tab 22.

23) In December of 1983, a major propane explosion and fire destroyed a multi-block neighborhood in the City of Buffalo, killing five firemen and two civilians. At least 24 buildings were totally destroyed and at least 80 other buildings and houses were severely damaged with damage estimates exceeding 20 million-dollars. Following the explosion, I initiated and supervised a lengthy Erie County grand jury investigation. One individual who was involved with the storage of the 500 gallon propane tank which exploded was indicted and convicted on charges of unlawfully storing the propane tank. Another individual was indicted and acquitted on charges of criminally negligent homicide as a result of the explosion. For additional details, see related newspaper articles, appendix - tab 23.

24) During the period September of 1983 through March of 1984, I initiated, coordinated and supervised a multi-police agency and Erie County grand jury investigation into four serial-type killings of area shopkeepers. As a result, an individual was indicted and convicted of three of the four shopkeeper murders. The fourth indictment is pending. For additional details, see related newspaper articles, appendix - tab 24.

25) In June of 1984, I supervised a state police and Erie County grand jury investigation resulting in the indictment and conviction of an individual for murdering his brother. The legal significance of this case was that it is the first murder conviction obtained in New York State where the victim's body was never recovered and the prosecution was based solely on circumstantial evidence. For additional details, see related newspaper articles, appendix - tab 25.

26) In September of 1984, I supervised an Erie County grand jury investigation resulting in the indictment and conviction of an individual for the murder of the first Internal Revenue Service agent killed while performing his official duties. This case was prosecuted locally upon request of the United States Attorney. For additional details, see related newspaper articles, appendix - tab 26.

27) In September of 1984, I concluded an 18 month investigation into allegations of illegal political fundraising through ticket sales to employees of the City of Buffalo in city government buildings in violation of the New York State Civil Service Law. Although this matter was not presented to a grand jury because of insufficient evidence of criminality, I prepared a lengthy public report setting forth the specific findings and conclusions of the investigation. The practical effect of the report was to bring a long-standing practice of political fundraising into compliance with New York State's Civil Service Law. For additional details, see newspaper article, appendix - tab 27.

19. (continued)

28) Since 1985, I have been coordinating and supervising an Erie County grand jury investigation into allegations concerning questionable practices in Erie County Surrogate's Court. This investigation was undertaken jointly with the New York State Attorney General's Office and is presently pending. For additional details, see related newspaper articles, appendix - tab 28.

29) Since 1986, I have been supervising an Erie County grand jury investigation of the Chief of Staff to the City of Buffalo Common Council regarding allegations that he was involved in gambling and other criminal wrongdoing. The first phase of that investigation resulted in the indictment and conviction of the individual for stealing over $66,300 from the Buffalo Softball League. The second phase of the investigation is still pending. For additional details, see related newspaper articles, appendix - tab 29.

30) In February of 1987, I supervised an Erie County grand jury investigation into allegations of misconduct by a local attorney involving client funds. The attorney was indicted and convicted of charges that he stole more than $442,000 from elderly clients whom he represented. Additionally, the lawyer has since resigned from the practicing Bar of the State of New York. For additional details, see related newspaper articles, appendix - tab 30.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   Upon resigning from my present employment, I may elect to withdraw the contributions which I have made to the New York State Employees Retirement System. The present balance in my account is approximately $11,000.

   There are no other relevant arrangements.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   In the event a conflict of interest arose, I would disassociate myself from the source of the conflict. If it involved a matter that came before me as a sitting judge, I would recuse myself from the matter.

   The only potential conflicts-of-interest which might arise during my initial service would be litigation involving defendants convicted of crimes in the state courts who seek redress in the United States District Court for alleged claims while I was the District Attorney.

   I am unaware of any potential conflict of interest that would evolve as a result of any financial arrangement which I presently have or may have had in the past.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978 may be substituted here.)

   (See Executive Personnel Financial Disclosure Report, Attachment B.)

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   See Attachment C

Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes. I was the endorsed Republican and Conservative Party candidate for election as Erie County District Attorney in 1981 as well as for re-election to that position in 1985.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In my professional life I have attempted to the best of my ability to administer both the offices of the United States Attorney for the Western District of New York and the Erie County District Attorney's Office in a fair and just manner. In my personal life as well, I have pursued efforts intended to assist the disadvantaged. As such, I can state without reservation that I have never treated anyone differently because of race, color, creed, national origin or gender. Similarly, I have never shown favoritism to any person on the basis of relationship, personal friendship or status.

Throughout my professional career, I have consistently taken initiatives to address the needs of the disadvantaged. For example, as United States Attorney and as District Attorney, I undertook and implemented aggressive affirmative action hiring programs. Of the 11 Assistant United States Attorneys and the 92 Assistant District Attorneys whom I hired, 72 percent and 50 percent respectively were women and minorities.

I have also endeavored to be at all times open-minded and sensitive in my decision-making. I maintain an open-door policy and seek input from attorneys and other interested members of the community. I have made this a common practice in deciding upon plea dispositions and sentencing recommendations. In addition, I have worked with the courts, the probation department and other departments such as pre-trial services to address various criminal justice issues including prison overcrowding and the detection of defendants with behavioral disorders. Recently, I agreed to support an intensive probation program in the trial courts on an interim basis and to support rehabilitation efforts for defendants with learning disabilities. As to the latter, I authored a letter, as President of the National District Attorneys Association, to the Honorable Senator Daniel Patrick Moynihan endorsing the related legislation which he recently introduced.

Some of my other professional efforts have included appearances before the United States Sentencing Commission and service as Vice-Chairman of the ABA ad hoc Committee on the Bail Reform Act of 1984. I undertook the former in an effort to help bring about uniformity in federal sentencing. As a former United States Attorney, I am acutely aware of sentencing disparities in federal court and the resulting reasons for grave concern. Similarly, I am serving on the Bail Reform Act Committee to address and remedy fairness issues which have been raised since the enactment of the Bail law.

Upon my urging, the Erie County Legislature approved a Victim/Witness Program for the District Attorney's Office. It is my belief that the criminal justice system must be more responsive to the specialized needs of crime victims and witnesses. I also established a Comprehensive Assault, Abuse and Rape Unit in my present office. This CAAR (pronounced "care") unit specializes in the prosecution of domestic violence, child abuse and sex crimes. Two similar programs I established are the Pre-Warrant (pre-criminal charge) Diversion Program and the Stop Shoplifting School Program. Both programs are for first-time offenders who meet strict criteria. Among the tangible results and benefits have been the relieving of court congestion, the freeing of court resources for more serious prosecutions and the providing of a second chance to technical violators without imposing a criminal record.

In my personal life, I have been active in such community organizations as the United Cerebral Palsy Association and the Niagara Frontier Vocational Rehabilitation Center. I have served with my wife as honorary co-chairperson, for the annual United Cerebral Palsy Telethon sponsored by Buffalo television station Channel 7, an ABC national affiliate. While serving on the Board of Directors of the Niagara Frontier Vocational Rehabilitation Center, I was instrumental in procuring a contract for handicapped workers to provide janitorial services in public buildings in Buffalo. Additionally, I am a member of the National Association for the Advancement of Colored People and the National Conference of Christians and Jews. Both of these organizations actively seek equal justice and the elimination of discrimination.

I would note that because of my full-time public positions, I have been prohibited from personally providing pro bono legal services to the disadvantaged. To the extent possible, however, I and the members of my staff work with various local organizations, such as the Erie County Bar Association, to assure that needed and competent legal assistance is provided to indigent defendants through such programs as the Assigned Counsel Program.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I do not currently belong, nor have I belonged, to any organizations that invidiously discriminate on the basis of race, sex, or religion. I would note, however, that in approximately 1978, certain members of the City of Buffalo government expressed concern as to the statistical representation of minorities in the context of the total membership of the Buffalo Yacht Club. This concern was raised at the time when the Buffalo Yacht Club's 99 year lease of City-owned property was about to expire. In response, the Buffalo Yacht Club issued an affirmative action statement denying any policy or practice of discrimination based on race, creed, gender or national origin and, as far as I am aware, its policy against discriminatory practices has been carried out since the time of my initial membership. I believe the Buffalo Yacht Club's statement was acceptable to the City of Buffalo in that the City entered into a formal agreement to sell the subject property to the Club. Moreover, the Buffalo Yacht Club's policy was again restated approximately seven years ago when it reaffirmed its policy in the context of full membership for women.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including) the circumstances which led to your nomination and interviews in which you participated.

Yes, there is an ad hoc Judicial Screening Committee of Senator Alfonse M. D'Amato in my jurisdiction which considers and/or recommends candidates for nomination to the federal courts. It is my understanding that the Committee did recommend my nomination.

As best as I can determine, the circumstances leading to my nomination have their origin in approximately Spring, 1981. At that time, I was serving in a holdover status as United States Attorney for the Western District of New York having been appointed by President Gerald Ford.

Sometime that Spring, I received a telephone call from United States Senator Alfonse M. D'Amato. Senator D'Amato advised me that he intended to recommend me to President Ronald Reagan for appointment to another term as United States Attorney because he had learned that I was running a highly professional and non-partisan office. I thanked the Senator but shortly thereafter, I advised him that I intended to resign and seek election in the Fall as District Attorney for Erie County.

Following my election as District Attorney, I developed a professional relationship and a personal friendship with Senator D'Amato.

In the Spring of 1987, there were published reports that John T. Elfvin, United States District Judge for the Western District of New York, submitted a letter expressing his intention to enter senior status. Following this announcement, I received a telephone call from Senator D'Amato in which he asked me if I was interested in becoming a federal judge. I responded that I would be honored and privileged to be considered and he advised me that he would refer my name to his Judicial Screening Committee for its consideration. Senator D'Amato also said he would arrange to have me meet with officials of the Department of Justice. I received a Judicial Screening Committee questionnaire and was scheduled by that Committee for a meeting with its members on June 8, 1987.

Prior to meeting with the Judicial Screening Committee, I met in Washington, D.C. on May 6, 1987 with Stephen Markman, Assistant Attorney General; Steve Matthews, Deputy Assistant Attorney General; James Knapp, Deputy Assistant Attorney General and Seth Liebman, Attorney Advisor of the United States Department of Justice about my appointment to the federal judiciary. During the meetings on that day I was asked mainly questions of a general nature concerning my background and work experience.

Under cover of letter dated May 19, 1987 from the Department of Justice, I received a Personal Data Sheet for the confidential use of the Department of Justice and the American Bar Association's Standing Committee on Federal Judiciary. I completed the form and, as instructed, forwarded it to Robert B. Fiske, Jr., Esq., Chairman, Standing Committee on Federal Judiciary and former Judge Harold R. Tyler, Jr., Esq.

3. (continued)

On or about May 20, 1987, I received a letter from the FBI advising that it had been asked to conduct a background investigation of me and enclosing various forms to be completed. On May 27, 1987 I was interviewed by Special Agent Michael Hayes of the FBI and I also provided him with the completed forms previously received.

On June 8th I went to New York City and was interviewed by Chairman Thomas Bolan, Paul Windels, Jr., John S. O'Mara and Serphin R. Maltese of Senator D'Amato's Judicial Screening Committee. The interview again consisted mainly of questions of a general nature concerning my background and work experience.

Under cover of letter dated June 12, I received from the Department of Justice a Memorandum Concerning Financial Disclosure and Conflict of Interest; a Physical Qualification-Judiciary Form and a copy of the Questionnaire to Judicial Nominees previously used by the United States Senate Committee on the Judiciary. I have completed and returned those documents.

On June 25, 1987, I went to New York City and met with former Judge Harold R. Tyler, Jr. representing the American Bar Association Standing Committee on Federal Judiciary. The questions which I was asked again were of a general nature concerning my background and work experience. After I returned to Buffalo, I received a telephone call on behalf of the Committee from Theodore Van Itallie requesting additional information. I provided the information requested during the telephone call. It is my understanding that the American Bar Association has given me its "well-qualified" rating regarding my nomination and that the entire matter was referred to President Reagan for his consideration.

Finally, on August , 1987, President Ronald Reagan advised me that he was nominating me for United States District Court Judge for the Western District of New York and that he was forwarding my nomination to the United States Senate Committee on the Judiciary.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No. In the selection process to date, I have never been asked about a specific case, legal issue or question which I believe in any way could be interpreted as seeking any expressed or implied assurances related thereto. However, during the course of the interview process with the Department of Justice, I was asked a hypothetical question involving an employment discrimination case. I interpreted the question to be one involving the process of judicially resolving a dispute rather than one seeking to determine any predisposition on my part regarding that category of cases.

4. (continued)

Finally, all of my interviews and meetings in the selection process, in addition to questioning of a general nature about my background and work experience, also included questioning to determine whether there was anything of a derogatory nature in my personal/professional background which might possibly embarrass the President, Senator D'Amato or the American Bar Association.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My views on the above criticism are as follows:

In general, I am in accord with certain of the recent criticism directed at "judicial activism," including some of those characteristics set forth in the text of this question.

In my view, the role of the Federal judiciary requires a diligent approach utilizing strict judicial impartiality in the decision-making process, with a corresponding prohibition against the use of judicial influence for effecting explicitly political goals. There should also be a reasoned reluctance to impose itself in any other role. The very essence of our system of government requires reverence for the maintenance of basic separation of powers with its attendant checks and balances.

Without respecting such basic principles, judicial activism can lead to a substantial disruption in the administration of justice and a lack of stability in the doctrine of stare decisis. I subscribe to the view that features the defined role of the judiciary being the interpretation and enforcement of the Constitution and the laws of the United States as enacted by the Congress. Moreover, I believe that judicial power is to be exercised, as much as possible, in dispute resolution between parties in the context of particular legal situations.

In conclusion, I believe a responsible judiciary, aware of its historical foundation and willingness to render impartial decisions to resolve the cases before it, is the standard by which all federal judges should be measured. Whether a judicial decision is "activist" or "conservative," whether far-reaching in scope or restricted between two parties, is of less importance than whether it be fair, honest, impartial and well reasoned with a solid legal foundation.

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Financial Disclosure Report

Form Approved
OMB No. 3209-0002

Page 1

Reporting Status (Check Appropriate Box)	☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer	Agency Use Only	OGE Use Only
Reporting Individual's Name	Last Name ARCARA	First Name and Middle Initial RICHARD J.	
Position for Which Filing	Title of Position U.S. District Court Judge Western District of New York	Department or Agency (If Applicable)	
Location of Present Office	Address (Number, Street, City, State and ZIP Code) 25 Delaware Avenue Buffalo, New York 14202	Telephone No. (Include Area Code) (716)855-2521	
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held n/a		
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Senate Judiciary Committee	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual Richard J. Arcara	Date (Month, Day, Year) Aug. 5, 1988	
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)	
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)	
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)	

Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)

Termination Date (If Applicable) (Month, Day, Year)

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

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Reporting Individual's Name		Page Number		Schedule
Richard J. Arcara	**Assets and Income**		2	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
	Examples	X Y Z Common				x				x									x								x	
		Doe Jones & Smith, Hometown, USA			x											pinrshp income									$50,000			
	1	Prudential Bache Money Market Account				x						x							x									
	2	U.S. Savings Bonds (value at maturity)		x								x						x										
	3	County of Erie														Salary								x	129,307			
	4	Individual Retirement Accounts			x							x							x									
	5	New York State Employee Retirement System			x							x						x										
S	6	American Medical International														Salary												
S	7	Individual Retirement Accounts			x							x							x									
S	8	Sale of 45% interest in Physicians International, Buffalo NY											x										x					
	9																											
	10																											

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Page Number	3	Schedule C

Reporting Individual's Name

Richard J. Arcara

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☒

S or DC		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
S	1	Marine Midland Bank, Buffalo, NY	Guarantor on Small Business Administration Loan to Physicians International, Inc.	1984	13%	*				X	
	2										
	3										
	4										
	5										
	6										

*Released from loan guaranty in October, 1986

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/78 ptnership agmnt

PREVIOUS EDITION USABLE

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SF 278 (Rev. 1/86)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0001

Reporting Individual's Name

Richard J. Arcara

Page Number	4	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83
	National District Attorneys Assoc., Wash., D.C.	Non-profit education	President	1/87	present
	New York State District Attorneys Association	Non-profit education	President	7/87	present
	American Prosecutors Research Institute Washington, D.C.	Non-profit education	Chairman Board of Directors	1/87	present
	National Association of Former United States Attorneys	Non-profit organization	Board of Directors	1983	present
	Judges and Police Executives Conference of Erie County, N.Y.	Non-profit organization	President	1/86	1/87
	Niagara Frontier Vocational Rehabilitation Center, Buffalo, NY		Board of Directors	1980	1986

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	County of Erie, Buffalo, New York	Salary as District Attorney

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FINANCIAL STATEMENT

NET WORTH

Dated: June, 1987

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

	ASSETS	
*	Cash on hand and in banks	12,209.00
**	U.S. Government securities—add schedule	2,375.00
	Listed securities—add schedule	0
	Unlisted securities—add schedule	0
	Accounts and notes receivable:	
	Due from relatives and friends	0
	Due from others	0
	Doubtful	0
***	Real estate owned—add schedule	350,000.00
	Real estate mortgages receivable	0
****	Autos and other personal property	0
	Cash value—life insurance	39,200.00
*****	Other assets—itemize:	
	Total assets	448,784.00

LIABILITIES		
Notes payable to banks—secured	0	
Notes payable to banks—unsecured	0	
Notes payable to relatives	0	
Notes payable to others	0	
Accounts and bills due	0	*****
Unpaid income tax	0	
Other unpaid tax and interest	0	
Real estate mortgages payable—add schedule	126,949.78	****
Chattel mortgages and other liens payable	0	
Other debts—itemize:	0	*****
Total liabilities	126,949.78	
Net worth		
Total liabilities and net worth		

CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	0
On leases or contracts	0
Legal Claims	0
Provision for Federal Income Tax	0
Other special debt	0

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.) no	0
Are you defendant in any suits or legal actions? Yes (wife) -injunctive relief	
Have you ever taken bankruptcy? no	

* See Schedule A, Attached
** See Schedule B, Attached
*** See Schedule C, Attached
**** See Schedule D, Attached
***** See Schedule E, Attached
****** See Schedule F, Attached
******* See Schedule G, Attached
******** See Schedule H, Attached

JOINT ASSETS

Schedule A

Cash on Hand and in Banks

	Approximate Amounts:
Cash on hand	$50.00
Prudential Bache Money Management Account	37,659.00
Checking accounts	3,000.00
Savings Accounts	1,500.00
Total	$42,209.00

Schedule B

U.S. Government Securities

No.	Description	Value at Maturity
21	$75.00 Series EE U.S. Savings Bonds	$1,575.00
8	$100.00 Series EE U.S. Savings Bonds	800.00
Total		$2,375.00

Schedule C

Real Estate Owned

	Approximate Market Value
Personal residence located at: 276 Rivermist Drive, Buffalo, New York 14202	$350,000.00
Boat Dock located at: Rivermist Development Buffalo, New York 14202	$ 15,000.00
TOTAL	$365,000.00

Schedule D

Autos and other personal property

Leased 1987 Honda Accord
Monthly lease agreement payment of $345.00 for 4 years
I do not consider this as either an asset or a liability

Schedule E

Other Assets

	Approximate Value
New York State Employees' Retirement System Account Balance as of June, 1987	$11,000.00
Individual Retirement Accounts	20,000.00
Ladies diamond bracelet	2,800.00
Ladies diamond ring	2,400.00
Ladies mink coat	3,000.00
Total	$39,200.00

TOTAL ASSETS:	$448,784.00

JOINT LIABILITIES

Schedule F

Accounts and bills due

Although there exist various revolving charge accounts with department stores, lines of credits with local banks, Master Charge, Visa and an American Express account, none of these accounts has a balance due in excess of $1,000 at this time.

Schedule G

Real Estate Mortgages payable

Citicorp Homeowners Corporation Mortgage on personal residence at: 276 Rivermist Drive Buffalo, New York 14202	$126,949.78

Schedule H

Other debts

Monthly lease agreement payment of $345.00 for 4 years on a 1987 Honda Accord. I do not consider this as either an asset or a liability

LIABILITIES	$126,949.78

ABA
AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

CHAIRMAN
and Member-at-Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Gene W. Lafitte
One Shell Square
50th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One IBM Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Bldg.
Seattle, WA 98101

Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA
CIRCUIT & FEDERAL
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

BOARD OF GOVERNORS
LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF DIRECTOR
Wantland L. Sandel, Jr.
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5685

STAFF ASSISTANT
Diane Livingston
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5701

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August 10, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: RICHARD J. ARCARA
United States District Court
for the Western District of New York

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Richard J. Arcara for appointment as Judge of the United States District Court for the Western District of New York.

A substantial majority of our Committee is of the opinion that Mr. Arcara is "Well Qualified" for this appointment. The minority found him to be qualified.

Sincerely,

Robert B. Fiske, Jr.

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

SUZANNE B. CONLON

Birth:	January 17, 1939	Portland, Oregon
Legal Residence:	Illinois	
Marital Status:	Married	John L. Conlon
Education:	1960 - 1963	Mundelein College B.A. degree
	1964 - 1968	Loyola University School of Law J.D. degree
	1971	University of London Certificate
Bar:	1968 1977	Illinois California
Experience:	1968 - 1972	Law Clerk to Hon. Edwin A. Robson, U. S. District Court, Northern District of Illinois
	1972 - 1973	Pattishall, McAuliffe & Hofstetter Associate
	1973 - 1975	Schiff, Hardin & Waite Associate
	1976 - 1977	Assistant U. S. Attorney Northern District of Illinois
	1978 - 1982	Assistant U. S. Attorney Central District of California
	1982 - 1986	Assistant U. S. Attorney Northern District of Illinois
	1986 - present	U. S. Sentencing Commission Deputy General Counsel

Office:
1331 Pennsylvania Avenue, N.W., Suite 1400
Washington, D.C. 20004
202 662-8848

Home:
300 No. State Street, Apt 5407
Chicago, Illinois 60610

2709 P Street, N.W.
Washingtom, D.C. 20007

To be United States District Judge for the Northern District of Illinois

BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name.

Suzanne B. Conlon

Suzanne Ellsworth Brown (maiden name until 1971)

2. Residence addresses:

300 N. State Street
Apt. 5407
Chicago, Illinois 60610

2709 P Street, N.W.
Washington, D.C. 20007

Office address:

United States Sentencing Commission
1331 Pennsylvania Ave., N.W.
Suite 1400
Washington, D.C. 20004

3. Date and place of birth.

January 17, 1939
Portland, Oregon

4. Married to:

John L Conlon
Hopkins & Sutter (partner in law firm)
Three First National Plaza
Suite 4200
Chicago, Illinois 60602

5. Education:

Mundelein College, 1960-1963, B.A., History, June 1963 (attended summer courses at Northwestern and DePaul Universities)

Loyola University School of Law, 1964-1968, J.D., *cum laude*, June 1968)

University of London (England), Certificate First Class, Foreign and Comparative Law, August 1970

Dartmouth College, Certificate, Summer Intensive Italian

Program, July 1985

6. Employment Record:

Deputy General Counsel (April through September 1986)
Executive Director (October 1986 to present)
United States Sentencing Commission

United States Department of Justice
Assistant United States Attorney (Chicago and Los Angeles)
(January 1976 to April 1986)

Associated with Schiff Hardin & Waite
(January 1973 to December 1975)

Associated with Pattishall, McAuliffe & Hostetter
(April 1972 to January 1973)

Law Clerk to Chief Judge Edwin A Robson
United States District Court for the Northern District of Illinois (June 1968 to December 1971)

Assistant Professor of Law (September 1971 to May 1972)
Lecturer (September 1972 to May 1976)
DePaul University

7. Military Service.

None.

8. Honors and Awards.

Graduated cum laude from law school (class rank: 3rd)
Board of Law Review Editors
Academic scholarship, two years
Tutor, Legal Writing Program
Special Commendation from former Attorney General Ben Civiletti, May 1980, for successful prosecutions of air piracy and kidnap-murder cases

9. Bar Associations.

American Bar Association - Criminal Justice Section: Prosecution Function Subcommittee; Publications Subcommittee; Grand Jury Subcommittee.

Chicago Bar Association - Board of Editors, Chicago Bar Record; Federal Civil Procedure Committee (Chairman, Federal Trial Bar Subcommittee, September 1985-present)

Federal Bar Association - Board of Directors, August 1985-present); Chairman, Criminal Law Committee, September 1984-June 1986; Chairman, continuing legal education seminars on the Comprehensive Crime Control Act of 1984 (April 1985) and effective appellate advocacy (December 1985)

Seventh Circuit Bar Association

Women's Bar Association of Illinois

California State Bar Association

Los Angeles County Bar Association

10. Other Memberships.

Art Institute of Chicago (Alliance contributor)

Woman's Athletic Club of Chicago

11. Court Admission.

Supreme Court of Illinois, Oct. 1968
U.S. District Court (Chicago), Nov. 1968
U.S. Court of Appeals, Seventh Circuit, Jan. 1969
Supreme Court of California, Oct. 1977
U.S. District Court (Los Angeles), Nov. 1977
U.S. Court of Appeals, Ninth Circuit, Dec. 1977
U.S. District Court Trial Bar (Chicago), Jan. 1983

12. Published Writings.

"Comparative Advertising: Whatever Happened to 'Brand X?'" 57 Chicago Bar Record 118-129 (Nov.- Dec. 1975), reprinted at 67 Trademark Reporter 407-418 (July - Aug. 1977), and in Advertising Law Anthology.

13. Health.

My health is excellent. My last physical examination was on August 22, 1986.

14. Judicial Office.

Not applicable.

15. Citations.

Not applicable.

16. Public Office.

Not applicable.

17. Legal career.

a. Law practice and experience.

1. Law clerk to former Chief Judge Edwin A. Robson, United States District Court for Northern Illinois, June 1968 - March 1972.

2. I have never practiced alone.

3. Legal experience:

1972 - 1973, Associate
Pattishall, McAuliffe & Hofstetter
33 W. Monroe Street
Chicago, Illinois 60603

1973 - 1975, Associate
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606

1976 - 1977, Assistant United States Attorney
Criminal Receiving and Appeals Division, and
Special Prosecutions Division
United States Attorney's Office
219 S. Dearborn Street
Chicago, Illinois 60604

1978 - 1982, Assistant United States Attorney
Assistant Chief, Criminal Division
Chief, Appellate Division
United States Attorney's Office
312 N. Spring Street
Los Angeles, California 90012

1982 - 1986, Assistant United States Attorney
Special Prosecutions Division, and
Economic Crime Enforcement Coordinator
United States Attorney's Office
219 S. Dearborn Street
Chicago, Illinois 60604

April 1986 - present, Deputy General Counsel
United States Sentencing Commission
Suite 1400
1331 Pennsylvania Ave., N.W.
Washington, D.C. 20004

b.1. General character of my practice and areas of specialization.

CIVIL AND CRIMINAL LITIGATION EXPERIENCE (1972 - 1986)

Nine years of trial and appellate experience as an Assistant United States Attorney in Chicago and Los Angeles. Tried numerous jury and bench cases, including charges of conspiracy, fraud (investment, government programs, breach of public and private trusts, bank), racketeering, arson, narcotics, official corruption, bank robbery, movie piracy (copyright violations), extortion-kidnapping, and air piracy. Trials in Chicago were before Judges Decker, Kirkland, Grady, Leighton, Marshall, Shadur, Roszkowski, Aspen and Will. Trials in Los Angeles were before Judges Hatter, Real, Lucas, Waters, Lydick, Gray and Crary.

Three years of litigation experience in private practice in Chicago with:

Schiff Hardin & Waite (1973 - 1975). Matters involved antitrust, securities, unfair competition, breach of contract claims. Participated in a three-month antitrust trial in Pittsburgh.

Pattishall, McAuliffe & Hofstetter (1972 - 1973). Matters involved trademarks, copyrights and unfair competition. Prepared complaints, motions, briefs, and filings for registration of trademarks and copyrights.

LEGISLATIVE AND ADMINISTRATIVE

United States Sentencing Commission (April 1986 - present). Advising independent judicial commission with respect to criminal law and procedure issues; supervision of legal, research and administrative staff in implementing Commission policies and projects; coordinating public comment and consultation with various groups, including the judiciary, probation officers, prosecutors and defense attorneys, victims' groups and others similarly interested in or affected by the Commssion's work.

b.1. As a federal prosecutor, law enforcement agencies and victims of crime may be considered "clients" in the sense that I was responsible for representing their interests, as well as those of the general public, in the context of the criminal justice system.

In private practice, the clients of the law firms I was associated with were mostly corporations, small businesses, hospitals and, occasionally, individuals. I did some pro bono work for a Children's Memorial Hospital and as appointed counsel for a state prisoner in a federal habeas corpus proceeding.

c.1. I appeared in court occasionally from 1972 to 1975, regularly from 1975 to 1981, occasionally from 1982 to 1983 because of administrative responsibilities, and regularly from 1984 until April 1986.

2. Appearances were in:
   (a) federal courts (100%)
   (b) state courts (none)
   (c) other courts (none)

3. My litigation was:
   (a) civil (10%)
   (b) criminal (90%)

4. I tried approximately 60 cases to verdict or judgment; in approximately 30 cases, I was sole counsel; in 25 I was principal counsel; in five cases, I was associate counsel.

5. Jury: 80%
   Non-jury: 20%

18. The following are the ten most significant cases that I personally handled.

1. United States v. John C. Hollingshead, et al., 672 F.2d 751 (9th Cir. 1982). Conspiracy to defraud the Federal Reserve Bank and bribery of a FRB employee. I was sole prosecutor. Four co-defendants pleaded guilty. The most significant issue of the many raised before, during and after trial was one of first impression: whether a FRB employee is a "public official" under the federal bribery statute. The FRB employee was convicted and sentenced to three years in prison. I handled the appeal also.

(a) Three week jury trial in December, 1980.

(b) U.S. District Court for Central California, Judge Terry J. Hatter, Jr.

(c) Stanley I. Greenberg
10850 Wilshire Blvd.
Westwood, CA 90024
(213) 474-6555

Hon. Stephen V. Wilson
U.S. District Court
312 N. Spring Street
Los Angeles, CA 90012
(213) 894-4327

2. United States v. Gary Halbert, et al., 712 F.2d 388 (9th Cir. 1983). Mail fraud scheme with 20,000 victims nationwide. Two defendants pleaded guilty and the main defendant went to trial. The most significant issue in the case related to the assertion of a diminished capacity defense based upon the defendant's claimed "brain-washing" by an unconventional "scream therapy" group. He was nevertheless convicted and was sentenced to three years in prison. I was sole prosecutor and also handled the appeal.

(a) Two week jury trial in August, 1981.

(b) U.S. District Court for Central California, Judge Malcolm M. Lucas (now a Justice of the California Supreme Court)

(c) Gerald F. Uelmen
Loyola University Law School
1441 W. Olympic Blvd.
Los Angeles, CA 90015
(213) 933-4945

3. United States v. Dennis Partridge, No. CR 81-820-DWW and United States v. David Evans, No. CR 81-821-RJK. Prosecution of strike coordinator and president of air controllers' local union for unlawful strike against the FAA. Highly sensitive case with intense media coverage. After evidentiary hearings on selective prosecution issues, and rulings in government's favor in both cases, the defendants pleaded guilty and did not appeal the rulings on pretrial motions before two different judges. This disposition succeeded in maintaining the government's sovereignty with respect to strikes by its employees, while avoiding the hostile confrontations (and several acquittals) which resulted in prosecutions of air traffic controllers in some other districts.

I was lead counselin both cases, with Assistant U.S. Attorney Dan Broderick as co-counsel.

(a) Two evidentiary hearings, October, 1981.

(b) U.S. District Court for Central California, Judge David W. Williams (Partridge) and Judge Robert J. Kelleher (Evans)

(c) David R. Hinden (both cases)
Glassman & Browning
360 N. Bedford Drive
Beverly Hills, CA 90210
(213) 278-5100

4. United States v. Eugene Ziperstein, et al., 602 F.2d 281 (7th Cir. 1979). Thirteen medical clinic owners and operators, doctors and pharmacists were prosecuted for a $20,000,000 fraud on the Medicaid system. The charges included racketeering. This was the first major prosecution of fraud on a government agency using the RICO statute. Seven defendants were convicted and their convictions were upheld on appeal. I was co-counsel with two other Assistant U.S. Attorneys (William F. Conlon, (312) 853-7384 and Thomas P. Johnson, (303) 595-9900).

(a) Jury trial lasted from April 12, 1977 to June 25, 1977.

(b) U.S. District Court for Northern Illinois, Judge Hubert L. Will

(c) Raymond J. Smith
55 W. Monroe St.
Chicago, IL 60603
(312) 853-3230

Michael B. Nash
53 W. Jackson Blvd.
Chicago, IL 60604
(312) 922-8980

Frank W. Oliver
431 S. Dearborn St.
Chicago, IL 60605
(312) 786-1048

Edward J. Calihan, Jr.
53 W. Jackson Blvd.
Chicago, IL 60604
(312) 922-3113

Bernard B. Brody
134 N. LaSalle St.
Chicago, IL 60602
(312) 263-4600

Patrick A. Tuite
19 S. LaSalle St.
Chicago, IL 60603
(312) 641-1022

Gerald M. Werksman
55 W. Monroe St.
Chicago, IL 60603
(312) 372-5196

Thomas A. Durkin
431 S. Dearborn St.
Chicago, IL 60605
(312) 341-1919

Anna R. Lavin
53 W. Jackson Blvd.
Chicago, IL 60604
(312) 922-3113

5. United States v. Robert J. Ferguson. Multimillion dollar bank fraud perpetrated by a man who was so wealthy he claimed he could not have intended to defraud anyone. Judge Marshall found him guilty nevertheless and sentenced him to four years in prison. I was co-counsel for the government with William B. Lytton, (215) 665-9910.

(a) One week bench trial in January, 1977.

(b) U.S. District Court for Northern Illinois, Judge Prentice W. Marshall.

(c) Raymond J. Smith
53 W. Monroe St.
Chicago, IL 60603
(312) 853-3230

6. United States v. U.S. Gypsum Co., et al., 550 F.2d 115 (3d Cir. 1977). Criminal antitrust case involving leading gypsum wallboard manufacturers charged with price-fixing. The defense was based upon a Robinson-Patman price verification theory. The trial judge refused to instruct the jury on this defense theory. All defendants were convicted, but their convictions were reversed on appeal. I was "third chair" for defendant Celotex Corporation with W. Donald McSweeney and William A. Montgomery.

(a) Three month jury trial, April 1976-June 1976.

(b) U.S. District Court for Western Pennsylvania, Judge Hubert I. Teitelbaum

(c) W. Donald McSweeney
233 S. Wacker Drive
Chicago, IL 60606
(312) 876-1000

Robert C. Keck
233 S. Wacker Drive
Chicago, IL 60606
(312) 876-3411

Fred H. Bartlit
200 E. Randolph Drive
Chicago, IL 60601
(312) 861-2202

7. United States v. Donald LeRoy Smith. Murder-kidnapping extortion case. Defendant kidnapped and murdered a young woman and demanded $100,000 from her brother's construction company. The defendant raised a coercion-duress defense, but was convicted and sentenced to the statutory maximum of 20 years in prison. I was sole prosecutor and also handled the appeal, which resulted in an affirmance by unpublished memorandum opinion.

(a) One week jury trial in September, 1979.

(b) United States District Court for Central California, Judge Malcolm M. Lucas (now a Justice of the California Supreme Court).

(c) Richard D. Burda
708 S. Berendo St.
Los Angeles, CA 90005
(213) 389-8066

8. United States v. Mary Ann Bilanzich, 771 F.2d 292 (7th Cir. 1985). This was a prosecution of the manager of a hotel servicing elderly and mentally retarded persons. She was charged with stealing government benefits checks and forging them. A co-defendant pleaded guilty. The most significant issue raised was one of first impression in the Seventh Circuit: the constitutionality of Bail Reform Act of 1984 provisions, as well as a suppression issue relating to the seizure of hotel records. I was the lead counsel at trial and wrote the appellate brief. My co-counsel, William R. Coulson (312) 353-5300, argued the case on appeal.

(a) Two day suppression hearing and one day bench trial in October and November, 1984.

(b) U.S. District Court for Northern Illinois, Judge John F. Grady.

(c) D. Ashley Pennington III
Deputy Federal Defender
219 S. Dearborn Street
Chicago, IL 60604
(312) 435-5580

Robert A. Korenkiewicz
4192 Archer Avenue
Chicago, IL 60632
(312) 247-3702

9. United States v. Donald Podolsky, 625 F.Supp. 188 (N.D.Ill. 1985), affirmed, 798 F.2d 177 (7th Cir., July 31, 1986). This was a prosecution of two Chicago firemen for conspiracy and attempted arson. One defendant pleaded guilty and the other went to trial. The most significant issues related to allegations of manufactured federal jurisdiction and the applicability of contractual concepts to a conspiracy. I was the sole prosecutor and also handled the appeal.

(a) One day bench trial in August, 1985.

(b) U.S. District Court for Northern Illinois, Judge Marvin E. Aspen.

(c) D. Ashley Pennington III
(see above)

Patrick A. Tuite
(see above)

10. United States v. Henry Centracchio, et al., 774 F.2d 856 (7th Cir. 1985). This was a conspiracy and bank fraud case involving a bank officer and two outsiders who operated a loan scam. One defendant pleaded guilty and the other two went to trial and were convicted. The most significant issues were the conduct of one of the defense attorneys (Oliver) and the co-defendant's right to a severence based upon Oliver's conduct. I was lead counsel at trial and also handled the appeal. My co-counsel was Ruben Castillo, (312) 353-5300.

(a) Two week jury trial in August, 1984.

(b) U.S. District Court for Northern Illinois, Judge Milton I. Shadur.

(c) Frank W. Oliver
(see above)

Victor F. Ciardelli
19 W. Jackson Blvd.
Chicago, IL 60604
(312) 346-2522

19. Other Legal Activities.

Teaching. Since graduation from law school, I have been involved in various legal education projects. For the first several years, I taught substantive law courses (securities, corporations, unfair trade practices). This became too time consuming when I began to do trial work. However, I have continued to regularly teach at trial and appellate practice courses sponsored by various law schools, bar associations, and the Attorney General's Advocacy Institute.

Evaluation of United States Attorneys Offices. From 1982 until 1986, I was a member of a task force designated by the Executive Office for United States Attorneys to conduct performance evaluations. The project involved an analysis of case filings, dispositions and prosecutorial priorities, interviews of the judiciary, federal public defenders, law enforcement officials and court personnel regarding the performance and professionalism of each office, and preparation of a report with findings and recommendations.

The "Pizza Connection" Investigation. I supervised the Chicago phase of an alleged international heroin smuggling operation and coordinated investigative activities with the Federal Bureau of Investigation, United States Attorneys offices in New York, Detroit, Newark and Philadelphia, as well as with law enforcement officials in Rome, Palermo and Sao Paulo, Brazil. The resulting case, United States v. Badalamenti, has been in trial in the Southern District of New York for the past fifteen months.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangments, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

   I do not have any such arrangements, agreements or relationships.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

   It is my view that a judge must be sensitive to any potential conflict of interest or appearance of impropriety. A judge should not wait until a litigant raises the issue, but rather the judge should take the initiative in disqualifying himself or herself.

   It is therefore vital to keep current, updated records of all investments, including stocks, bonds, real estate, and partnership interests. These records should be kept not only to comply with applicable annual disclosure requirements, but for ready reference and updating. Current records should include investments and interests of my immediate family, as well as my own. This screening would be my personal responsibility prior to taking any action that might affect the outcome of a case.

   A systematic procedure must then be rigorously followed so that these records are promptly checked against all new case filings to determine any potential conflict. I would immediately disqualify myself if there appeared to be a potential conflict.

   I would also immediately disqualify myself if a party or attorney in a case was a relative, or other person whose present or past relationship might bring into question my fairness or objectivity.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with out without compensation, during your service with the court? If so, explain.

   I do not have any plans to pursue outside employment. However, it is my intention to continue my involvment in legal education programs without compensation.

4. Have you ever held a major position or played a major role in a political campaign?

   No.

5. If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm.

   This question is not applicable to me, as I have no financial interest in a law firm.

6. My financial net worth statement is attached, with appropriate schedules.

FINANCIAL STATEMENT

NET WORTH

December 31, 1986

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	50,000	00	
U.S. Government securities—add schedule	None		
Listed securities—add schedule	121,268	00	(1)
Unlisted securities—add schedule	71,880	00	(2)
Accounts and notes receivable:			
Due from relatives and friends			
Due from others	2,500	00	
Doubtful			
Real estate owned—add schedule	412,500	00	
Real estate mortgages receivable	None		
Autos and other personal property	20,000	00	
Cash value—life insurance	3,000	00	
Other assets—itemize: See List C	304,096	00	
Total assets	985,244	00	

LIABILITIES			
Notes payable to banks—secured	None		
Notes payable to banks—unsecured	None		
Notes payable to relatives	None		
Notes payable to others	None		
Accounts and bills due	3,000	00	
Unpaid income tax	None		
Other unpaid tax and interest			
Real estate mortgages payable—add schedule	276,000	00	
Chattel mortgages and other liens payable			
Other debts—itemize:			
Margin on stock	29,523	00	
Total liabilities	308,523	00	
Net worth	676,721	00	
Total liabilities and net worth	985,244	00	

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor			
On leases or contracts			
Legal Claims			
Provision for Federal Income Tax			
Other special debt			

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)			
Are you defendant in any suits or legal actions?			
Have you ever taken bankruptcy?			

NOTES TO FINANCIAL STATEMENT

1. Listed Securities:

American Capital Municipal Bond Fund	$ 6,500
Air Wisconsin SVCS Inc.	11,500
Cetus Corporation	22,500
Commonwealth Edison	6,000
Days Inn Corporation	10,375
Detroit Edison	3,500
Fidelity Tax Free Portfolio	5,966
First Australia Prime Interest Fund	2,437
First Chicago Corp.	6,000
Genovese Drug Stores Co.	1,425
Geriatric Medical Centers	3,712
I P Timberlands Ltd. Class A	2,675
Jaguar PLC Sponsored ADR	8,464
MCI Communications	3,312
Ozark Airlines	3,550
Rhodes, Inc.	9,500
Sears Roebuck & Co.	4,200
Sun Electric Corp.	9,365
U.S. Steel	287
	$121,268

2. Unlisted Securities:

City of Chicago Mortgage Participation Revenue Bond Issue A 3/79, face amount	$ 5,000
City of Evanston, Illinois Residential Mortgage Revenue Bond 1979A face amount	5,000
Illinois Housing Development Authority bonds face amt	10,000
Insured Municipal Income Trusts	16,000
Shearson Lehman Brothers Tax Exempt Income Fund	5,958
Stein Roe High Yield Municipal Fund	14,439
Stein Roe Managed Municipals Fund	15,483
	$ 71,880

3. Real Estate Owned:

Condominium (Chicago)	$120,000
Condominium (Chicago)	120,000
Condominium (Chicago, 1/2 interest)	17,500
Condominium (Los Angeles)	120,000
Condominium (Pasadena, Calif. 1/6 interest)	15,000
Home and farm land (Spring Green, Wis. 1/3 interest)	20,000
	$412,500

4. Other Assets:	
H. V. Lawrie Trustee Hopkins & Sutter Master Partnership Plan (retirement plan)	$140,646
-- Children's World Mortgage Notes ($25,000)	
-- Integrated Resources American Insured Mortgage Investors' ($10,000)	
-- Balcor Pension Investors VII ($5,000)	
-- Gemini II Income Shares ($13,750)	
-- Merrill Lynch Convertible Securities ($13,750)	
-- Minnesota Power and Light ($19,500)	
-- Merrill Lynch Retirement Benefit Investment Program ($15,420)	
-- C.D. First Texas Savings due 3/21/89 (20,000 shares unpriced, est. current market value $21,650)	
-- C.D. Bank of America due 2/6/90 (20,000 shares unpriced, est. current market value $15,476)	
-- CMA Money Market Funds ($1,100)	
James Andrew Company (investment company of certain partners of Hopkins & Sutter)	13,000
-- William Blair & Co. Equity Fund ($10,000)	
-- Entrepeneurs Fund ($2,750)	
Chrisken's Grand Rapids Self Storage (ltd. partnership)	12,500
Metro Uptown Investors, Ltd. (a/k/a Albuquerque Uptown Investors Ltd.)	22,000
Merrico Oil & Gas Income Fund	5,000
Nicholas Station II Ltd. Partnership	20,000
Saxon Oil Company Development Partners	2,000
Mutual Savings Money Market Fund (1/2 interest)	46,250
William Blair & Co. Equity Fund	10,000
Pathway Financial IRA account	4,000
IRA Certificate of Deposit	8,700
Federal Employees Retirement Plan (est.)	20,000
	$304,096

5. Real Estate Mortgages Payable:	
First National Bank of Chicago	$100,000
Pathway Financial	95,000
Merit Savings Bank	68,000
Richland Center Fed. Savings & Loan (1/3 interest)	13,000
	$276,000

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The term "judicial activism" reflects a popular concern that some judges do not respect the boundaries of the separation of powers. This concern usually arises when a judicial decision infringes upon a legislative or executive function. The federal judiciary is particularly sensitive to scrutiny for failure to respect the separation of powers.

There is room for debate about the nature of the judiciary's role in our society. The jurisdiction of the federal courts is explicitly limited by the Constitution and by statutes. The powers of federal courts are therefore finite and not broad. However, the Constitution confers upon the judiciary the responsibility of assuring that the guarantees of freedom, equality and justice are observed and enforced. Federal judges must maintain a delicate balance in insuring constitutional liberties, while declining to usurp legislative and executive perogatives in resolving societal problems.

"Judicial restraint" is the popular rubric for a responsible judge. While opinions may differ about the specific qualities a reponsible judge manifests, generally such judges respect the role of the legislative and executive branches of government by not using opportunities in litigation to substitute personal philospohies, public policy decisions, or political judgments for those properly exercised by others. Since federal judges have lifetime appointments, it is particularly critical that persons selected for the bench be sensitive to the boundaries of their role.

A federal judge must be mindful not only of the constitutional limitations upon his or her authority, but should also respect the boundaries of judicial power in specific cases and exercise that power with restraint. This means care must be taken to assure that litigants have standing to assert issues raised and that those issues are ripe for decision. It is particularly unfortunate when a judge becomes so eager to interject his or her views into litigation that decisions are based upon an incomplete record or undeveloped issues. Judges must not presume to have a higher degree of morality or wisdom than those appearing before them. Self-imposed limitations on the exercise of judicial power result in the resolution of disputes in a more careful and thoughtful manner.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

Most of my professional life has been spent in the public sector as an Assistant United States Attorney, as a law clerk to a federal judge, and now as the executive director of an independent judicial agency. My opportunities for doing pro bono work in the traditional sense have therefore been limited. However, as a public prosecutor and supervisor, I sought to exercise the discretion afforded my position in a responsible manner. I perceived as part of my responsibilities as a prosecutor to see that defendants were treated fairly.

While I was briefly in private practice, I did pro bono work for the Children's Memorial Hospital in Chicago. I also represented an indigent state prisoner in a federal habeas corpus proceeding.

2709 P Street, N.W.
Washington, D.C. 20007
June 15, 1987

Steven J. Metalitz, Special Counsel
Judicial Nominations Task Force
Room SD - 224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Metalitz:

Enclosed is my supplemental response to the underlined portions of the Judiciary Committee's revised questionnaire for judicial nominees requested in Senator Leahy's letter of June 5, 1987.

Sincerely,

Suzanne B Conlon

Suzanne B. Conlon

Enclosure

SUPPLEMENTAL RESPONSE OF SUZANNE B. CONLON
JUNE 15, 1987

1. BIOGRAPHICAL INFORMATION (PUBLIC)

11. Court Admission. List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership.

In 1983, my membership in the Supreme Court of Illinois lapsed briefly due to late payment of the annual registration fee. The original billing for the annual fee was mailed to the United States Attorney's Office in Los Angeles (where I previously worked) and was not forwarded to my Chicago office. My membership was reinstated when I learned of the billing several months later and made payment.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional issues or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I was on the editorial board of my law review and The Chicago Bar Record. I participated in the editing of numerous articles and student notes. It is therefore difficult for me to accurately estimate the number of articles that I participated in editing. The only constitutional issue I recall related to a law review article I edited in law school analyzing a Supreme Court decision recognizing a right to counsel in juvenile proceedings. The articles I edited for The Chicago Bar Record generally pertained to recent substantive or procedure developments in a variety of civil and criminal areas.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My representation of an indigent state prisoner in a habeas corpus proceedings in federal court involved the preparation of a petition on his behalf, and an opposition to the State's motion to dismiss the proceedings. I appeared in court on his behalf on at least three occasions. I also researched a number of legal issues relating to his petition for release. Although it is difficult to estimate the time I actually devoted to this matter, it would be fair to say that I worked at least several hours a week for a period of approximately seven months.

My participation in *pro bono* work for the Childen's Memorial Hospital was part of an on-going volunteer program to advise the medical staff regarding appropriate action for patients who appeared to be victims of physical abuse. This involved analysis of medical evidence, contact with state and local social agencies and the county prosecutor's office. I spent at least two to three days a month working on these *pro bono* child-abuse cases.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I have been a member of the Woman's Athletic Club of Chicago since 1983. The club restricts membership to women. There are no membership restrictions, formal or in practice, based upon racial, ethnic or religious considerations.

According to the president of the club, there has never been any interest expressed by a man in joining.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your expericence in the entire judicial selection process, from beginning to end (including the circumstances which led

to your nomination and interview in which you participated.)

There is not a selection commission in my jurisdiction. However, local bar associations traditionally screen candidates and make recommendations.

In 1983, I was contacted by Senator Charles Percy and asked to fill out a detailed questionnaire. Senator Percy stated that I had been recommended to him by judges of the United States District Court for Northern Illinois as a potential judicial candidate.

In September, 1984, I was contacted by the Chicago Bar Association, the Illinois State Bar Association, the Federal Bar Association, and the Chicago Council of Lawyers. Each organization sent me questionnaires and stated that Senator Percy had asked them to evaluate my qualifications for a district judgeship. I was interviewed by a group of approximately 20 members of the Illinois State Bar Association in early November, 1984. That group rated me "qualified." Similar interviews were scheduled by the other bar associations in late November. Those interviews were cancelled after the November election because of Senator Percy's defeat.

In early 1985, Congressman Robert H. Michel's office inquired whether I was interested in consideration for a federal judgeship. I submitted another questionnaire (almost identical with both the Percy and Senate Judiciary Committee's questionnaires). I was interviewed approximately one month later by Congressman Michel's administrative assistant in Peoria, Illinois.

During the spring of 1985, I was screened by the Chicago Bar Association at Congressman Michel's request and was rated "qualified." In April or May, 1985, I was interviewed by a number of Congressmen from Illinois, including John Porter, Harris Fawell, George O'Brien, Robert H. Michel, and Henry Hyde. I was interviewed by Lynn Martin approximately a year later.

In May,1986, Congressman Michel informed me that the Illinois congressional delegation was recommending me for a vacancy on the federal district court in Chicago. Later that month I was interviewed by Department of Justice staff.

In July, 1986, I was informed by either Congressman Michel's office or the Department of Justice that my name would be submitted to the White House. In August, 1986, I received questionnaires from the Federal Bureau of Investigation and the American Bar Association.

In February, 1987, I was informed that a "substantial majority" of the ABA judicial evaluation committee found me "qualified." At about the same time, the Chicago Council of Lawyers asked me to update a questionnaire I had submitted to them two years earlier and asked to reinterview me in March, 1987. In early May, 1987, I was notified that the Council found me "not qualified."

On April 2, 1987, the President submitted my name to the Senate.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No person involved in the selection process has asked me questions that could reasonably be interpreted as seeking such improper assurances.

January 26, 1988

Steven J. Metalitz, Esq.
Special Counsel
Judicial Nominations Task Force
Room SD-224, Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Metalitz:

On June 15, 1987, I provided a supplemental response to the Judiciary Committee's revised questionnaire for judicial nominees. With respect to Part III, question 2, I stated that I was a member of the Woman's Athletic Club of Chicago and that the club restricts membership to women. Last week, I was informed by Celia Hilliard, a member of the Board of Directors, that the restrictive by-law was repealed late last summer and that men are now eligible for membership.

Sincerely,

Suzanne B. Conlon
Suzanne B. Conlon

cc:
Caroline Weil, OLA

ABA
AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

CHAIRMAN
and Member-at-Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite [illegible]
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Gene W. Lafitte
One Shell Square
50th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One IBM Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA
CIRCUIT & FEDERAL
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

BOARD OF GOVERNORS
LIAISON
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2005 Gird Road
Fallbrook, CA 92028

STAFF DIRECTOR
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750 North Lake Shore Drive
Chicago, IL 60611
312/988-5685

STAFF ASSISTANT
Diane Livingston
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5701

April 3, 1987

CONFIDENTIAL

RECEIVED APR 07 1987

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: SUZANNE B. CONLON
United States District Court
Northern District of Illinois

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Suzanne B. Conlon for appointment as Judge of the United States District Court for the Northern District of Illinois.

A substantial majority of our Committee is of the opinion that Ms. Conlon is "Qualified" for this appointment. The minority found her to be "Not Qualified".

Sincerely,

Robert B. Fiske

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members and
Certain Former Chairpersons

CONFIRMATION HEARING ON: PAUL R. MICHEL, MALCOLM J. HOWARD, RODOLFO LOZANO, AND STEPHEN M. REASONER

WEDNESDAY, FEBRUARY 17, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howard Metzenbaum (acting chairman) presiding.

Also present: Senators Thurmond and Specter.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Robert J. Short, minority chief investigator; and Frank Klonoski, minority investigator.

Senator METZENBAUM. This morning the Judiciary Committee holds its 20th hearing in this Congress to consider nominations to the lower Federal courts. Today we will take testimony on four nominations. Paul Michel of Virginia has been nominated to be U.S. circuit judge for the Federal circuit.

The other three nominations, for the district courts, Malcolm Howard for the Eastern District of North Carolina; Rudy Lozano for the Northern District of Indiana; and Stephen Reasoner for the Eastern District of Arkansas.

As we customarily do, we will hear first from Senators who wish to introduce nominees to the committee. Before we begin these introductions, let me note for the record that all four nominees before the committee this morning have completed extensive questionnaires on their qualifications, experience, and financial situation. The publicly available portions of these questionnaire responses will be printed in the record of this hearing.

We will also keep the record open for a limited time for follow up questions to the nominees and for additional questions that may be submitted by members of the committee who are unable to be present this morning.

We will also include in the record the complete introductory statements of Senators, including any who are unable to attend in person this morning due to scheduling conflicts.

Also, the statement of the Honorable Walter Jones, First District of North Carolina, on behalf of Malcolm Howard.

[The prepared statement of Representative Walter B. Jones follows:]

STATEMENT BY THE HONORABLE WALTER B. JONES
U.S. HOUSE OF REPRESENTATIVES
1ST DISTRICT OF NORTH CAROLINA
BEFORE SENATE JUDICIARY COMMITTEE
ON THE NOMINATION OF
MALCOLM J. HOWARD TO THE FEDERAL JUDICIARY

February 17, 1988

I strongly endorse the nomination of my friend Malcolm J. Howard to serve as Judge of the Federal District Court for the Eastern District of North Carolina. I commend the Senate Judiciary Committee for scheduling this hearing on Mr. Howard's nomination.

Mac Howard is an individual of character and integrity and an attorney of high ability. He has compiled a record of distinction in the private practice of law and of public service in the government and in the military. He is eminently qualified to be a federal judge.

Perhaps you may find it unusual that I and other Democratic political leaders are strongly endorsing Mac's nomination. It is certainly true that he is a loyal Republican who has participated openly in the political process. In fact, Mac at one time sought his party's nomination to oppose me for election to the House of Representatives. Perhaps fortunately for me, I was spared the

FORMIDABLE CHORE OF FACING HIM IN THE GENERAL ELECTION. IN ANY EVERT, MAC HAS EARNED THE RESPECT AND FRIENDSHIP OF MANY OF US IN THE NORTH CAROLINA DEMOCRATIC PARTY. IN CONTRAST TO THE CONTROVERSIES AND DISPUTES SURROUNDING THE PREVIOUS NOMINEE TO THIS JUDGESHIP, THERE IS WIDESPREAD ACCLAIM FOR THE PRESIDENT'S CHOICE OF MAC HOWARD.

IT IS GRATIFYING THAT MAC HAS BEEN GRANTED A TIMELY OPPORTUNITY TO APPEAR BEFORE THE JUDICIARY COMMITTEE FOR A HEARING. IT HAS BEEN FIVE MONTHS SINCE THE PRESIDENT PLACED HIS NAME IN NOMINATION. IT HAS BEEN OVER THREE AND ONE-HALF YEARS SINCE THIS POSITION BECAME VACANT. I BELIEVE THAT THIS JUDGESHIP HAS BEEN VACANT LONGER THAN ANY OTHER IN THE FEDERAL JUDICIARY FOR WHICH THERE IS A NOMINEE.

I AM CONFIDENT THAT THIS HEARING WILL CONVINCE YOU THAT MAC HOWARD IS A NOMINEE WORTHY OF SENATE CONFIRMATION. WERE I FORTUNATE ENOUGH TO SERVE IN THIS BODY, I WOULD CAST A HEARTY AND UNQUALIFIED "YES" FOR MAC HOWARD.

Senator METZENBAUM. I note that the distinguished ranking minority member of the Judiciary Committee is here with us this morning. Senator Thurmond, do you have a statement?

Senator THURMOND. I do not have a statement. I just want to attend the hearing of these fine people. Hopefully we can expedite the action on them.

Senator METZENBAUM. Thank you very much.

Senator Specter?

Senator SPECTER. Thank you very much, Mr. Chairman.

I am here both in my capacity as a member of the committee and to introduce Paul Michel, my former administrative assistant and currently counsel, but since I shall be here and there are other Senators who are waiting, and even though Mr. Michel is first on the list, I would defer my introduction until the other Senators have had an opportunity to speak, because I have some instinct that they may have some other things to do.

Senator METZENBAUM. Thank you, Senator Specter.

Senator Heinz? Is Senator Heinz here?

Senator SPECTER. I think Senator Heinz has been listed inadvertently, because I was listed as well, Senator Metzenbaum.

Senator METZENBAUM. Senator Helms and Senator Sanford, in connection with the nomination of Mr. Howard. We are very happy to hear from the Senator from North Carolina. We are happy to see you this morning, sir. Senator Helms.

STATEMENT OF HON. JESSE HELMS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator HELMS. Mr. Chairman, I thank you very much, and I thank Senator Specter for his customary courtesy and thoughtfulness. We are trying to get a quorum in the Agriculture Committee and you know how difficult it is to get quorums around this place.

Mr. Chairman, I appreciate the opportunity to come here this morning. There is so much that could and should be said about Malcolm J. Howard. I will tell you one thing, you will not hear me refer to him as Malcolm again. He is Mack Howard.

You have his biographical information before you, reciting his remarkable career. You know that he heads a prestigious law firm in Greenville, North Carolina, that he is a graduate of West Point, that he served in the infantry in Vietnam, that he earned the Silver Star for Gallantry along with two Bronze Stars for heroism in combat, and he earned the Purple Heart the hard way.

As I say, you have all that information, and more, in the material assembled for considering Mack Howard's nomination.

What I want to discuss this morning, and briefly, is Mack Howard and his family, and the deep respect in which he is held among countless thousands of people who know him, people of all political persuasions, in all walks of life, people who have dealt with him, people who have experienced Mack Howard's warmth and dedication and compassion.

His dear wife, Eloise, is here along with their daughter, Shannon, and their son, Josh. As a matter of personal privilege, Mr. Chairman, I would appreciate it if you would allow his family to stand up at this time. Eloise, Shannon, and the red-headed young fellow is Josh.

Senator **Metzenbaum**. We are very happy to have you all with us.

Senator **Helms**. I remember visiting in the Howard home on one occasion when Shannon and Josh were small. The loving, caring atmosphere of their home, their love of God and country, and their decency and honor, these are the things that registered with me.

Mack Howard's support is across-the-board. It is, as I have said, bi-partisan. It is genuine and it is enthusiastic.

The North Carolina Bar Association surveyed its 7,500 members regarding Mr. Howard. The president of the bar, E. James Moore, made this report concerning that survey: "Of those members of the NCBA who felt qualified to rate the credentials of Mr. Howard, the vast majority of them responded with a solid 'very qualified' rating."

This, then, is the Mack Howard whom I am proud to present to you. He will serve as a Federal judge as he has conducted himself in all the years preceding: a decent, honorable, dedicated American with the courage to do what is right and the compassion to understand his obligation to all of society.

Obviously, I recommend him wholeheartedly and without reservation. I come here with gratitude that I have the privilege of presenting him to this distinguished committee.

Mr. Chairman, if I may, I would ask that two articles of newspapers be included in the record. I thank the Chair.

[The prepared statement of Senator Jesse Helms and articles follow:]

Mr. Chairman, members of this distinguished Committee: There's so much that could and should be said about Malcolm J. Howard -- and one thing is for sure, you won't hear me refer to him as Malcolm again.

You have his biographical information before you, reciting his remarkable career. You know that he heads a prestigious law firm in Greenville, North Carolina, that he is a graduate of West Point, that he served in infantry in Vietnam, that he earned the Silver Star for gallantry along with two Bronze Stars for heroism in combat and the Purple Heart.

As I say, you have all that information -- and more -- in the material assembled for considering Mack Howard's nomination.

What I want to discuss is Mack Howard and his family, and the deep respect in which he is held among countless thousands of people who know him, who have dealt with, and who have experienced his warmth and dedication and compassion.

His dear wife, Eloise, is here along with their daughter, Shannon, and their son, Josh. I remember visiting in their home when Shannon and Josh were small. The loving, caring atmosphere of the Howard home -- their love of God and country, their decency and honor -- these are the things that registered with me.

Mack Howard's support is across-the-board. It is bi-partisan. It is genuine and enthusiastic.

The North Carolina Bar Association surveyed its 7,500 members about Mack Howard. The president of the Bar Association, E. James Moore, made this report concerning the survey:

"Of those members of the NCBA who felt qualified to rate the credentials of Mr. Howard, the vast majority of them responded with a solid 'very qualified' rating."

The American Bar Association assessed him as "Qualified."

This, then, is the Mack Howard whom I am proud to present to you. He will serve as a federal judge as he has conducted himself in all the years preceding -- a decent, honorable and dedicated American with the courage to do what is right and the compassion to understand his obligation to all of society.

I recommend him wholeheartedly, and without reservation. I come here with gratitude that I have the privilege of presenting him to this distinguished committee.

Mr. Chairman, I ask unanimous consent that two articles about Mack Howard be included in the Record.

NEW JUDGE-NOMINEE HAS FRIENDS HERE

(By Hoover Adams)

Greenville attorney Malcolm (Mack) J. Howard, nominated to be a new Federal judge yesterday by Senator Jesse Helms, is a close friend of Rev. Tom McCann, pastor of Dunn's First Baptist Church.

The Howards and the McCanns have been close since Tom, Mrs. Howard and her brother were all students at the University of Hawaii in Honolulu. It's an interesting story.

Tom's father was a Colonel in the Air Force at Hickam Field and Eloise McGinty's father was a Major there.

Mack Howard was a West Point cadet on special duty at Hickam. When the Hickam Field Officers Club held its annual debutante party, Cadet Howard was picked as her escort. They fell in love and were married.

Lt. Howard graduated from West Point, received his commission and went on to VietNam and became a hero, receiving the Silver Star, the Bronze Medal and other decorations.

Tom McCann came to North Carolina and took a job as administrative assistant to John Gold, one of the pioneer city managers in the State and then city manager at Winston-Salem.

Mack Howard went to Winston-Salem to attend law school at Wake Forest University. Mr. and Mrs. McCann were apartment hunting one day and opened the door of one apartment and ran smack into Mack and Eloise Howard looking at the same apartment.

Tom got the apartment, he recalls, so Mack and Eloise bought a house.

It wasn't the last time their paths crossed.

Tom and Mrs. McCann moved to Alexandria, Va., where he became Director of the Office of Budget and Finance.

Meanwhile, Mack Howard entered the Judge Advocate School at nearby Charlottesville but lived in Alexandria. So they became neighbors again.

Mack Howard went on to become a White House attorney under President Richard Nixon and Tom left a high-paying government job to enter the ministry.

"Tom's a great fellow but I haven't had the privilege of hearing him preach yet," the new federal judge-nominee told The Daily Record yesterday. "I hope to get down to Dunn to hear him sometime."

The popular Dunn pastor says he and Mrs. McCann and Mr. and Mrs. Howard have a lot of fond memories of good times together. He planned to call Howard to congratulate him upon his nomination by Senator Helms.

"Mrs. Howard is one of the most beautiful ladies you'll ever see," declares Tom. He recalls that she was first runner-up in the Miss Hawaii Beauty Pageant "and probably would have won and gone on to become Miss America if she'd been a Hawaiian and also if the judges hadn't noticed Mack's engagement ring on her finger."

Mr. Howard is also a good friend of Dunn business executive John H. Wellons, who owns large real estate holdings and other business interests in Greenville. Howard is his attorney there.

It's still a small world.

[From the Greenville (NC) Daily Reflector, May 31, 1987]

HIGHLY QUALIFIED

Pitt County and indeed all of North Carolina has been honored with the nomination of Greenville resident Malcolm J. "Mack" Howard for a federal judgeship.

Howard, a local practicing attorney, was nominated by U.S. Sen. Jesse Helms. If the nomination is confirmed, Howard will serve in the Eastern District of North Carolina.

The confirmation process involves investigation by the Department of Justice, American Bar Association and U.S. Senate Judiciary Committee. They will find that Malcolm Howard is very well qualified to serve as a federal judge. Those who study his background will learn he is known as a high caliber individual in Pitt County.

A senior partner in the law firm of Howard, Browning, Sams, Poole, Hill and Daniel in Greenville, Howard has an outstanding record of public service. His background is impressive. It includes graduating from the U.S. Military Academy at West Point, combat service in Vietnam, service as a U.S. attorney and special counsel to President Richard Nixon. He was president of the student body at Wake

Forest University School of Law. He is active in Memorial Baptist Church and in various local civic projects.

As an attorney he has served as an adjunct professor at East Carolina University, has lectured before legal groups and has written for legal publications.

It would be difficult to find a a candidate for federal judgeship who is more qualified than Malcolm Howard. The confirmation process will require some time but we anticipate that it will conclude favorably. Certainly Malcolm Howard has our unqualified support for confirmation as a federal judge.

Senator **Metzenbaum**. Thank you, Senator.

We are very happy to welcome Senator Terry Sanford this morning. He is certainly a rather new member of the Senate, but he has a distinguished public career. We are happy to hear from you.

STATEMENT OF HON. TERRY SANFORD, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator **Sanford**. Mr. Chairman, thank you, and thank you, members of the committee.

I am delighted to be here to endorse and to recommend Malcolm J. Howard, who has been nominated to be the U.S. judge in the Eastern District of North Carolina. I am glad, too, to greet his wonderful family, Eloise, Shannon and Joshua.

When I first learned of this nomination, I set out to make inquiries of lawyers, judges and other friends in eastern North Carolina to see what I could find out about him. Almost before I could get started, many of them were calling me. What I heard over and over is that Mack Howard is a fine person, an exemplary citizen, a highly respected lawyer, and would make an excellent judge.

Unlike Senator Helms, this is the last time that I am going to refer to him as Mack. If he is going to be a district judge, he is Mr. Howard right now.

I was impressed that part of his practice is devoted to representing financially depressed farmers in bankruptcy proceedings, where he has been successful in obtaining confirmed reorganization plans for more than 30 farm families under the Family Farm Reorganization Act. He has generously given of his time and personal expense, speaking to farm groups about available relief in the crunch that they have been going through. He has assisted Legal Services Corporation on a regular basis in bankruptcy matters without charge.

I learned that Mr. Howard's legal experience, from my investigation, is both diverse and considerable. He has served as legislative counsel to the Secretary of the Army, as assistant U.S. attorney, deputy special counsel to the President for the Watergate proceedings, and general counsel to a manufacturing company. For the past 14 years, he has been engaged in the private practice of law, spending the bulk of his time in Federal court litigation.

Mr. Howard has also a distinguished military career. He graduated from West Point Military Academy, spent 10 years on active duty, including two tours in Vietnam, 10 years reserve duty before being honorably discharged in 1982. I take special interest in any fellow paratrooper, and I am pleased to note that he received airborne training and completed 30 military jumps. He received numerous military awards and commendations, including the Silver Star, the Bronze Star, and the Purple Heart.

Mr. Howard comes to us with the solid endorsement of the North Carolina Bar Association and the ABA.

In summary, Mr. Chairman and members of the committee, I am completely satisfied that Mr. Howard is, by training, talent and temperament, eminently qualified to serve as a Federal judge and I strongly recommend his confirmation.

[The prepared statement of Senator Terry Sanford follows:]

INTRODUCTION OF MALCOLM J. HOWARD
BY SENATOR TERRY SANFORD
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
FEBRUARY 17, 1988

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM DELIGHTED TO BE HERE TODAY TO ENDORSE AND RECOMMEND MALCOLM J. HOWARD, WHO HAS BEEN NOMINATED TO BE UNITED STATES JUDGE FOR THE EASTERN DISTRICT OF NORTH CAROLINA. MR. HOWARD IS ACCOMPANIED TODAY BY HIS LOVELY WIFE OF TWENTY-FIVE YEARS, ELOISE, AND THEIR CHILDREN, SHANNON AND JOSHUA.

WHEN I FIRST LEARNED THAT MR. HOWARD HAD BEEN NOMINATED, I SET OUT TO MAKE INQUIRIES OF LAWYERS, JUDGES AND OTHER FRIENDS IN EASTERN NORTH CAROLINA TO SEE WHAT I COULD FIND OUT ABOUT HIM. ALMOST BEFORE I COULD GET STARTED, MANY OF THEM WERE CALLING ME. WHAT I HEARD OVER AND OVER IS THAT MACK HOWARD IS A FINE PERSON, AN EXEMPLARY CITIZEN, A HIGHLY RESPECTED LAWYER, AND WOULD MAKE AN EXCELLENT JUDGE.

I WAS IMPRESSED THAT PART OF HIS PRACTICE IS DEVOTED TO REPRESENTING FINANCIALLY DISTRESSED FARMERS IN BANKRUPTCY PROCEEDINGS, WHERE HE HAS BEEN SUCCESSFUL IN OBTAINING CONFIRMED REORGANIZATION PLANS FOR MORE THAN THIRTY FARM FAMILIES UNDER THE FAMILY FARM REORGANIZATION ACT. HE HAS GENEROUSLY GIVEN HIS TIME AND PERSONAL EXPENSE SPEAKING TO VARIOUS FARM GROUPS ABOUT AVAILABLE RELIEF, AND HE HAS ASSISTED LEGAL SERVICES CORPORATION ON A REGULAR BASIS IN BANKRUPTCY MATTERS WITHOUT CHARGE.

I LEARNED THAT MR. HOWARD'S LEGAL EXPERIENCE IS BO DIVERSE AND CONSIDERABLE. HE HAS SERVED AS LEGISLATIVE COUNSEL TO THE SECRETARY OF THE ARMY, AN ASSISTANT U.S. ATTORNEY, DEPUTY SPECIAL COUNSEL TO THE PRESIDENT FOR THE WATERGATE PROCEEDINGS, AND GENERAL COUNSEL TO A MANUFAC COMPANY. FOR THE PAST FOURTEEN YEARS, HE HAS BEEN ENGAG THE PRIVATE PRACTICE OF LAW, SPENDING THE BULK OF HIS T FEDERAL COURT LITIGATION.

MR. HOWARD HAS ALSO HAD A DISTINGUISHED MILITARY CAREER. HE GRADUATED FROM WEST POINT MILITARY ACADEMY, SP TEN YEARS ON ACTIVE DUTY, INCLUDING TWO TOURS IN VIETNAM, TEN YEARS RESERVE DUTY BEFORE BEING HONORABLY DISCHARGED 1982. AS A FELLOW PARATROOPER, I AM PLEASED TO NOTE THA RECEIVED AIRBORNE TRAINING AND COMPLETED THIRTY MILITARY PARACHUTE JUMPS. HE RECEIVED NUMEROUS MILITARY AWARDS A COMMENDATIONS, INCLUDING THE SILVER STAR, BRONZE STAR, A THE PURPLE HEART.

MR. HOWARD COMES TO US WITH THE ENDORSEMENT OF THE NO CAROLINA BAR ASSOCIATION AND THE ABA.

IN SUMMARY, MR. CHAIRMAN, I AM COMPLETELY SATISFIED T MACK HOWARD IS, BY TRAINING, TALENT, AND TEMPERAMENT EMINENTLY WELL QUALIFIED TO SERVE AS A FEDERAL JUDGE AND I STRONGLY RECOMMEND HIS CONFIRMATION.

Senator METZENBAUM. Thank you very much.

We appreciate the cooperation and the presentation of the two U.S. Senators. Mr. Howard, if you would be good enough just to stay with us but retire from the front seat at the moment, so we can hear the other Senators make their presentation, then we will get back to you.

Senator THURMOND. I imagine you Senators will be leaving and I just want to tell Mr. Howard he is fortunate to have the endorsement of both your Senators, Senator Helms, who is a very prominent Senator here on the Republican side and the distinguished junior Senator here, Senator Sanford, who is a prominent Senator on the Democratic side. That is of great help, when you have both Senators endorsing you. I congratulate you.

Senator SPECTER. Mr. Chairman, I would like to associate myself with Senator Thurmond's remarks.

Senator METZENBAUM. I do, too, then. I would not want to be left out.

Senator Lugar and Senator Quayle are both here to present Mr. Lozano. I might say to those who are the presenters, the Senators, that the committee's support, in the past, has usually been in inverse proportion to the length of the presentation. In other words, the longer the presentation, the lesser the amount of support. I think you get the message.

Senator Lugar, we are happy to have you with us this morning, sir. Please proceed.

STATEMENT OF HON. RICHARD LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Thank you very much, Mr. Chairman.

It is a very great pleasure to present Rudy Lozano to you and my presentation to you will be brief, as I am certain will be that of my colleague.

First of all, I would like to introduce Mrs. Lozano, Dina Jo and Rudy, Jr., who are immediately behind us, the family of Mr. Lozano.

It is a privilege to introduce this distinguished nominee, Rodolfo "Rudy" Lozano, a nominee to the District Court for the Northern District of Indiana. I am pleased that President Reagan accepted the recommendation of the Bipartisan Merit Selection Commission on Federal Judicial Appointments, which Senator Quayle and I established to review candidates for Federal judicial positions.

Rudy was one of three selected by the commission from a large field of very talented Indiana attorneys. His credentials are impressive, as indicated by the well-qualified rating he received from the American Bar Association for this judicial appointment.

He was born and raised in the Hoosier State, earning both his bachelor's degree in accounting and his law degree from Indiana University. He also completed post-graduate work in admiralty law at the Lawyer's Institute of John Marshall Law School in Chicago.

Upon graduation from law school, Mr. Lozano served his country from 1966 to 1972 as a member of the U.S. Army Reserve. He began his professional relationship at this time with the Merrillville, Indiana law firm of Spangler, Jennings, Spangler & Dougherty where he remains today in the capacity of senior partner and member of the board of directors.

He has spent much of his legal career engaged in trial work, in the areas of legal and medical malpractice, general liability matters and civil rights cases. He is a member of 12 different bar associations and legal related committees, including the Association of Trial Lawyers of America, Phi Delta Phi Legal Fraternity and the Hispanic Bar Association of which he was vice president in 1984 and 1985.

Rudy has been admitted to practice before all of the courts of Indiana, as well as the Supreme Court of the United States.

I believe that Rudy Lozano possesses the knowledge, reason, and commitment to his work which make him an outstanding choice for the position of U.S. district court judge. His fellow attorneys in the northwest part of our State offer nothing but accolades when asked about his fitness to serve in this capacity. He is a source of great pride in the Hispanic community in Indiana and across the Nation.

Upon confirmation, he would be the first Hispanic Federal judge to preside in the northern part of Indiana.

Mr. Chairman, I am honored to introduce this great nominee to the committee and I urge the committee's support for his confirmation.

Senator **Metzenbaum**. Thank you very much, Senator Lugar, for a very impressive presentation.

Senator Quayle, we are happy to have you with us this morning for what I am sure will be equally impressive.

STATEMENT OF HON. DAN QUAYLE, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator **Quayle**. In lieu of trying to be equally impressive, let me just ask consent to have my remarks inserted in the record at this point, and I will summarize what my senior colleague, Dick Lugar, said about Rudy Lozano.

I think the first and most important thing is, once again, Mr. Chairman, we bring to you a candidate that is a product of the Merit Selection Advisory Commission that was established by Senator Lugar, and myself a number of years ago. I believe that we have brought to you a number of nominees and every one of the products of that process has gone through this committee and the Senate without dissent.

I think you will find that this gentleman, Rudy Lozano, will be no exception to the past type of candidate that we have presented to this committee.

Rudy is, as you can see, a family man. He is a product of northwest Indiana. His family grew up there and worked in the steel mills. He understands hard work and I know that two of our distinguished colleagues on the Judiciary Committee here today understand the steel mills and the problems that they have had.

His family has worked in those mills. He worked in them. After law school and other things, as Senator Lugar pointed out, he has built up a very prominent law practice. He is a practicing lawyer. He has been referred to as a lawyer's lawyer.

He is the kind of person that has the energies, the hard work, the dedication, the integrity that will make him, in my judgment, an outstanding Federal judge.

I join my senior colleague in enthusiastic endorsement of Rudy Lozano and I think, and I hope, and anticipate that as in previous nominees sent to this committee, that you will find him equally outstanding, as we do.

It is with a great deal of pleasure that I join with Dick Lugar in nominating somebody I think will be truly outstanding, a real asset to the Northern District Court of Indiana.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Dan Quayle follows:]

STATEMENT OF SENATOR DAN QUAYLE (R-IN)
BEFORE THE COMMITTEE ON THE JUDICIARY
OF THE U.S. SENATE
ON THE NOMINATION OF RUDY LOZANO
TO BE A FEDERAL JUDGE
IN THE NORTHERN DISTRICT OF INDIANA

February 17, 1988

Mr. Chairman, I appreciate the opportunity to appear before you today to introduce Rudy Lozano, who has my strongest endorsement for the position of Federal Judge for the Northern District of Indiana.

Mr. Chairman, I did not know Rudy Lozano before he applied to the Merit Advisory Commission set up by Senator Lugar and myself to fill a vacant judgeship. But it is characteristic of Rudy's entire career that, in his quiet but efficient way, he quickly rose to the top of the pack and emerged as the overwhelming choice of the nine-member panel of legal experts that make recommendations for judicial positions to Senator Lugar and me.

After reviewing Rudy's character and accomplishments, Mr. Chairman, I too became an admirer of his. So I am proud to be able to be here today to request the Committee's support of Rudy Lozano, confident that he will make an outstanding contribution to the Federal judiciary.

Rudy Lozano embodies a lot of the values and ideals we cherish in this country. Through dedication and hard work, he got a fine education and built an outstanding career. Rudy's family were among those that worked the steel mills, foundries and machine shops that built Northern Indiana into an industrial center. He worked his own way through school, partly through working these same mills, and helped build his law firm into one of the most prominent in Northwestern Indiana. Rudy is also active in his church and local civic organizations.

The position which Rudy is being asked to fill, that of Federal judge sitting in Northwestern Indiana, is one of the toughest in the nation. The backlog of cases in that venue is one of the highest among all Federal courts. The economy of Northwestern Indiana, dominated for decades by the steel and foundry industries, has seen tough times since reaching a peak in the late 1970s. It is no secret that there are tough problems of drug trafficking, violence and political corruption in the area.

I think Rudy Lozano is the right man to take on this challenging position. He is known as one of the hardest-working lawyers in Indiana. His reputation for honesty, integrity and dedication to community is untarnished. And having lived in the area his entire life, having received his education in Indiana, and having served in the Army reserves in the area, Rudy understands the people and the economic conditions of the area that give rise to the problems he will address from the bench.

Finally, Mr. President, Rudy Lozano is what is known as a lawyer's lawyer. His legal practice has been dominated by litigation. Too often I have heard the complaints of lawyers appearing before the Federal bench that the sitting judges have little personal experience with litigation. I am confident that Rudy Lozano, who has over 20 years of experience in litigation will not have this problem.

Having now gotten to know Mr. Lozano, Mr. Chairman, I can also attest to the fact that he possesses the ideal personality and temperament for a Federal judge. His own experience is characterized by advancement through hard work, overcoming difficult economic circumstances, and dedication to his family. Such experience will lead him to be a competent, but also an understanding and compassionate Federal judge.

Senator **Metzenbaum**. I want to thank both of the Senators for their presentations, and for being with us this morning. These are certainly very strong recommendations and you have a right to be very proud of the fact that two such distinguished Senators are here today supporting your nomination.

Senator **Thurmond**. I want to thank you upon your appointment by the President and congratulate you on having both your able Senators come in person here and endorse you. They are very outstanding Senators.

Senator Lugar is very prominent in foreign relations and other matters and Senator Quayle is very prominent in armed services and other matters. You are very fortunate in having both of them come here in person.

Senator **Sanford**. I would just like to associate myself with both your remarks, Mr. Chairman, and Senator Thurmond's remarks, in the interest of brevity.

Senator **Metzenbaum**. Thank you very much.

Our next witnesses are Senator Dale Bumpers, Senator David Pryor supporting Mr. Reasoner. And I think that Congressman John Paul Hammerschmidt, if he is here, we are happy to have him come forward as well.

Senator Bumpers, we are happy to hear from you, sir.

Senator **Bumpers**. Mr. Chairman, with the Chairman's indulgence, may I defer to my distinguished colleague from the House, Congressman Hammerschmidt, and allow him to go first?

Senator **Metzenbaum**. Certainly. Congressman Hammerschmidt?

STATEMENT OF HON. JOHN PAUL HAMMERSCHMIDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. **Hammerschmidt**. Mr. Chairman, it is a distinct pleasure for me to join my very good friends and distinguished colleagues from the Senate, Senator Bumpers and Senator Pryor, in introducing to the distinguished members of this committee, Mr. Stephen M. Reasoner of Jonesboro, Arkansas, who has been nominated to fill a vacancy on the U.S. District Court for the Eastern District of Arkansas.

Let me start by saying that ever since Mr. Reasoner was first recommended for this appointment, I have received a steady stream of letters expressing total support for him. I think it is particularly worth noting from whom this support came. Many of them were colleagues who had known him in college and law school. Others were from his peers who had dealt with or against him in the courtroom. Some were from people who had been president of the Arkansas Bar Association.

All of these letters had a common theme. He is a man of great intellect, high moral values, and a disposition which is both warm and compassionate.

Knowing that you have already studied his background very carefully, I will not detail all of his accomplishments here. However, I would be remiss if I did not point out that Stephen Reasoner has been an unqualified success at every endeavor he has undertaken; an honor graduate at the University of Arkansas School of

Law; editor-in-chief of the Law Review; and nearly 20 years of service with one of Arkansas' most respected law firms.

In my opinion, Stephen Reasoner is one of the most outstanding judgeship nominees it has been my pleasure to support. I trust that you will agree after you have heard from him directly.

Let me close by pointing out that Mr. Reasoner is accompanied today by his mother, Ms. Mary Reasoner. I wonder if I could indulge the Chair, if she would stand. Steve's wife, Susan, and their son, Brian.

I thank you for this opportunity to appear before you Mr. Chairman and distinguished members of the committee, and I thank the distinguished senior Senator from Arkansas for yielding me his time first.

There is a brother here that I have missed, I'm sorry.

[The prepared statement of John Paul Hammerschmidt follows:]

TESTIMONY OF THE HONORABLE JOHN PAUL HAMMERSCHMIDT
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
FEBRUARY 17, 1988
10:30 A.M. SD 226

MR. CHAIRMAN, IT IS A DISTINCT PLEASURE FOR ME TO HAVE THE OPPORTUNITY TODAY TO INTRODUCE TO THE DISTINGUISHED MEMBER OF THIS COMMITTEE MR. STEPHEN M. REASONER OF JONESBORO, ARKANSAS WHO HAS BEEN NOMINATED TO FILL A VACANCY ON THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS.

LET ME START BY SAYING THAT EVER SINCE MR. REASONER WAS FIRST RECOMMENDED FOR THIS APPOINTMENT, I HAVE RECEIVED A STEADY STREAM OF LETTERS EXPRESSING TOTAL SUPPORT FOR HIM. I THINK IT IS PARTICULARLY WORTH NOTING FROM WHOM THIS SUPPORT CAME: MANY OF THEM WERE FROM COLLEAGUES WHO HAD KNOWN HIM IN COLLEGE AND LAW SCHOOL; OTHERS WERE FROM HIS PEERS WHO HAD DEALT WITH OR AGAINST HIM IN THE COURTROOM; SOME WERE FROM PEOPLE WHO HAD BEEN PRESIDENT OF THE ARKANSAS BAR ASSOCIATION. ALL OF THESE LETTERS HAD A COMMON THEME; HE IS A MAN OF GREAT INTELLECT, HIGH MORAL VALUES, AND A DISPOSITION WHICH IS BOTH WARM AND COMPASSIONATE.

KNOWING THAT YOU HAVE ALREADY STUDIED HIS BACKGROUND VERY CAREFULLY I WILL NOT DETAIL ALL HIS ACCOMPLISHMENTS HERE. HOWEVER, I WOULD BE REMISS IF I DID NOT POINT OUT THAT STEPHEN REASONER HAS BEEN AN UNQUALIFIED SUCCESS AT EVERY ENDEAVOR HE HAS UNDERTAKEN: AN HONOR GRADUATE OF THE UNIVERSITY OF ARKANSAS SCHOOL OF LAW; EDITOR-IN-CHIEF OF THE LAW REVIEW, AND NEARLY TWENTY YEARS OF SERVICE WITH ONE OF THE ARKANSAS' MOST RESPECTED LAW FIRMS.

IN MY OPINION, STEPHEN REASONER IS ONE OF THE MOST OUTSTANDING JUDGESHIP NOMINEES IT HAS BEEN MY PLEASURE TO SUPPORT AND I TRUST THAT YOU WILL AGREE AFTER YOU HAVE HEARD FROM HIM DIRECTLY.

LET ME CLOSE BY POINTING OUT THAT MR. REASONER IS ACCOMPANIED TODAY BY HIS MOTHER, MRS. (MARY) REASONER, HIS WIFE SUSAN AND THEIR SON BRIAN.

I THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

Senator **Metzenbaum**. We are very happy to have all of you with us. Thank you very much, Congressman.

Senator Bumpers.

STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator **Bumpers**. Mr. Chairman, I ask unanimous consent that my formal remarks be inserted in the record and I will just extemporize for a moment about Stephen Reasoner.

I am truly honored to be here this morning to assist my colleagues, Senator Pryor and Congressman Hammerschmidt, in presenting Stephen to this committee.

It goes without saying that sometimes these nominations are highly charged. Stephen is from the "wrong" political party. David Pryor and I are from the "right" political party. It would have probably have been rather easy for us to drag our feet and maybe slow this process down and maybe torpedo it completely, because this is an election year and sometimes that happens.

As I looked over his résumé, I looked over the American Bar Association's recommendation of him as being well qualified. I look over his academic record. He was number one in his law school class and editor-in-chief of the Law Review. He is a very devout, practicing Episcopalian and from there I checked with some of the very best friends I have and who are strong political supporters of mine, in Jonesboro, Craighead County, Arkansas where Stephen practices.

I might say that in all of the calls I made and all the comments I got, I got nothing but effusive, fullsome praise of Stephen, not only as a lawyer but as a citizen, as a churchman, and by every other measure that anybody could think of. Not one single negative comment.

Then I visited with him personally for some time, just recently, and found that we share, I think, a very healthy view of the Constitution, one that the Constitution is a breathing, living document. And certainly he appreciates precedent. He has an outstanding family and a reputation that is seldom excelled in any community.

So I can tell you that when we are offered a candidate of this stature and with all his qualifications, it is a singular honor for me to be here on his behalf today and strongly recommend his confirmation to this committee and to the full U.S. Senate.

Thank you, Mr. Chairman.

[The prepared statement of Senator Dale Bumpers follows:]

United States Senate
Committee on the Judiciary
February 17, 1988

Statement of Senator Dale Bumpers
on behalf of Stephen M. Reasoner

Mr. Chairman, it is my pleasure to introduce Stephen M. Reasoner, a distinguished Arkansas lawyer nominated for the position of United States District Judge for the Eastern District of Arkansas.

Mr. Chairman, I agree with the unanimous assessment of the ABA Standing Committee on the Federal Judiciary that Stephen Reasoner is well qualified for this position. His academic record is exemplary. He received a B.A. from the University of Arkansas at Fayetteville in 1966, having made the Dean's List each semester for four years. In 1969 he was awarded the degree of Juris Doctor, having graduated first in his class from the University of Arkansas School of Law. He also served as Editor in Chief of the Arkansas Law Review.

Since his graduation from law school Stephen has practiced law with a distinguished Jonesboro, Arkansas, law firm, Barrett, Wheatley, Smith & Deacon, becoming a partner in 1973. He is admitted to practice before the Arkansas Supreme Court, the U.S. District Court for the Eastern District of Arkansas, and the U.S. Court of Appeals for the Eighth Circuit. He has extensive trial and appellate experience in both federal and state courts. Moreover, he has been active in various bar associations, having served as President of the Craighead County Bar Association and on the House of Delegates and Executive Council of the Arkansas Bar Association. Lawyers who know him have attested to his personal and professional integrity and have expressed nothing but the highest praise for his abilities as a practitioner.

In addition, Stephen Reasoner is a respected member of the Jonesboro community. He is a member of St. Mark's Episcopal Church and is Chairman of the Board of Trustees of the Craighead County-Jonesboro Public Library. He is a member of the Jonesboro Chamber of Commerce and has served on the Board of Directors of Abilities Unlimited.

Mr. Chairman, the Senate's responsibility to advise and consent to Article III judicial nominations is an important one. We must confirm for these esteemed positions only those men and women who possess the requisite character, intellect, compassion and knowledge of the law. With these qualities in mind, I can recommend Stephen Reasoner without reservation. He is a fine man and a capable and experienced lawyer, and I believe he will become a distinguished federal judge. I urge the Committee to act quickly and favorably on his nomination.

Senator **Metzenbaum**. Thank you very much, Senator Bumpers. Senator Pryor.

STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator **Pryor**. Mr. Chairman, I thank you for letting me appear today on behalf of Mr. Reasoner and also to appear with my distinguished colleague, Senator Bumpers, and my friend of long standing, Congressman John Paul Hammerschmidt. We truly have a bipartisan group at the table this morning before this distinguished committee.

I will just make two or three points, Mr. Chairman. In July of 1987, Judge William R. Overton who was the federal district judge of the Eastern District of Arkansas died at age 46 of cancer. His death created this particular vacancy that we today are attempting to fill with this outstanding young attorney, Stephen Reasoner, who is possessed with a great legal mind and also, I must say, a dedication to community involvement.

Mr. Chairman, let me be very honest. When I heard the name of Stephen Reasoner being discussed in legal circles, and being mentioned as a potential successor to the late Judge William R. Overton, I decided that I would take it upon myself to do an investigation on my own.

I spoke with judges in whose courts Stephen Reasoner had practiced. I spoke with attorneys who had not only associated with him in particular cases, but more especially those who had been on the opposite side in litigation.

Let me report, Mr. Chairman and distinguished members of the committee, that not one—I repeat, not one—negative comment was made by the many people that I interviewed about this very splendid nominee, Stephen Reasoner, who is before this committee today.

I strongly recommend that the committee approve his nomination. Mr. Chairman, in looking at his past legal practice, I notice that some 44 percent of that legal practice has been in Federal courts. I think that his Federal trial experience and his expertise regarding constitutional law well qualify him for this particular position on the bench.

Mr. Chairman and members of the committee, I thank you for allowing me to attend and to help present this nominee.

Senator **Metzenbaum**. Thank you very much, Senator Pryor.

Mr. Reasoner, I hope you appreciate that the comments and strong support that you received from these two very well respected and distinguished members of the Senate, as well as Congressman Hammerschmidt, is a true tribute to you.

Obviously, they are not members of your party, but their effusive and very laudatory comments after they have made inquiry, I think, is truly something about which you must be very proud and we are happy to have your comments, gentlemen, all of you.

Senator Thurmond.

Senator **Thurmond**. Mr. Reasoner, I do not think you will have much trouble with the strong endorsement here, of these two able Senators who are Democrats.

I imagine you were selected by John Paul Hammerschmidt. You were certainly appointed by the President, and do not forget both of them are Republicans. [Laughter.]

At the same time, I want to congratulate you and I think it is very fine that these able Senators have come here and endorsed you so highly. I want to say that after seeing your mother, I feel sure that as someone has said that if a man favors his mother, he is wiser and better looking, too, so I congratulate you on that and I wish you well on the bench.

Senator **Metzenbaum**. Thank you very much, Senator Thurmond. Senator Specter.

Senator **Specter**. Thank you, Mr. Chairman.

Just a word or two. Mr. Reasoner, I think after hearing all the words of commendation about you, I think you may belong to the right political party. [Laughter.]

I welcome the comments from Senator Bumpers and Senator Pryor and Congressman Hammerschmidt. I know of Senator Pryor's association with Judge Overton. We have talked about Judge Overton in the past and, from all that I know, you have a very distinguished predecessor and I would join Senator Thurmond's comment in saying that with the support you have here, that your confirmation looks very, very good indeed.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you, Senator Specter.

Thank you very much. We appreciate all of you coming over to make your comments.

Senator Specter, would you like to present Mr. Michel?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator **Specter**. Thank you very much, Mr. Chairman.

I recollect your comment about brevity on introductions and I know that that admonition does not apply to members of the Judiciary Committee, and I know that from some of your introductions in the past, Senator Metzenbaum, as well as others.

I am delighted to present Paul Michel to this committee for the confirmation process. Mr. Michel brings an unusual coalescence of qualification for the court and for being deserving of the appointment.

At the outset, I thank the President and the Attorney-General for honoring my recommendation to name Mr. Michel to the U.S. Circuit Court for the Federal Circuit, a national appointment.

Mr. Michel's qualifications are established by the written record and I can supplement that record by providing some living history as to Paul Michel's background and qualifications.

As the written record notes, Paul Michel has an excellent educational background from Williams College and the University of Virginia Law School. Being a native Pennsylvanian, having been born in Philadelphia, and as a very young man came to the district attorney's office in Philadelphia when I was the district attorney and served with extraordinary distinction for the 7½ of the 8 years that I was district attorney there.

At that juncture, in the history of the criminal courts, we were inundated with extraordinary problems, the *Miranda* decision on confessions and the Supreme Court decisions changing the law on line-ups and juvenile rights and problems on demonstrations and the problems of the prisons and court congestion and plea-bargaining. Paul Michel did an extraordinary job, rending the most devoted service and very keen insights into the criminal law, into the trial practice which he undertook extensively, and always a balance for the rights of society and the rights of the accused.

When I left the district attorney's office and returned to private practice, I sought to have Paul Michel join my law firm, Dechert, Price & Rhodes, to indicate how much I thought of him. He chose, instead, to stay with public service. As his résumé shows, he had distinguished service as assistant special Watergate prosecutor and then worked with the Senate Intelligence Committee, and then had ranking positions in the Department of Justice as the deputy chief of the public integrity section and chief counsel in the Koreagate investigation and later served as associate deputy attorney general as a real professional in a Democratic administration, as he has been a real professional in working for people of the right political party, as Senator Bumpers would say.

When I was elected to the Senate, my first effort was to secure Paul Michel to join my office, which he did, and has served with great distinction as administrative assistant and more recently as my counsel. He has been intimately connected with the problems of the Judiciary Committee and the legal profession, and participated in the work of our committee which led to the formulation of the court which he is recommended for now, as the Court of Claims and the Court of Patent Appeals was joined together.

His breadth of knowledge goes far beyond the criminal law, far beyond trial practice generally in the work of the U.S. Senate. Paul Michel has been a lawyer's lawyer and I predict with confidence that if confirmed, he will be a judge's judge.

His credentials have been reviewed in depth by the Patent Bar and by the lawyers in the Court of Claims, a bar which prides itself on some degree of specialization and a bar which has stated its confidence that Paul Michel has the background and qualifications to serve with distinction on that court, where some think that some technical expertise is desireable.

To the extent that that is true, Mr. Michel possesses that technical expertise. My own view is that real lawyers can tackle problems in any branch of the law and can master them and I am sure that Paul Michel will do just that.

Finally, Paul Michel's elevation to the bench, I think, is a tribute to those who work on Senate staffs. I think it will be an inspiration to the very deserving men and women who sit behind the bench where we Senators sit, who have performed such long and diligent service. It is a sign to let all of you who aspire to the Federal bench note, that you can make it from a Senate staff.

I think it will assist—I guess I better conclude promptly here, Senator Metzenbaum has returned.

It will assist, I believe, in the recruiting process for staffers to know that if they work long enough and hard enough and show capability that, from a Senate staffer's position, they can become a U.S. circuit judge.

For all those reasons, I am especially pleased to make a presentation of a good friend and a colleague, and a man whom I know will be an outstanding Federal judge.

Thank you, Mr. Chairman.

Senator **METZENBAUM**. That is a very strong recommendation and I think your point has a lot of validity to it, and that is what the potential is for those who do the work around here.

Senator Thurmond.

Senator **THURMOND**. Do you think you can live up to all that Senator Specter has said about you? [Laughter.]

Mr. **MICHEL**. I will do my best, Senator Thurmond.

Senator **THURMOND**. I do not think I have heard him give anybody a finer recommendation than he has given you. You must have been a very able administrative assistant and an able counsel.

I want the Democrats to take notice, he served under Democratic as well as Republican administrations, so it will not be held up.

I congratulate you on your appointment and I am sure you will make a fine judge.

Mr. **MICHEL**. Thank you, Senator.

Senator **METZENBAUM**. Thank you very much, Mr. Michel.

Senator **SPECTER**. May we proceed, Mr. Chairman, if Paul Michel had been listed first, if we took him at this time?

Senator **METZENBAUM**. I see no problem with that.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **MICHEL**. I do.

TESTIMONY OF PAUL R. MICHEL, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

Senator **METZENBAUM**. Do you have family with you that you would like to introduce?

Mr. **MICHEL**. Mr. Chairman, I do. My nephew, Geoff Michel, is here. Geoff Michel is a young aide to Congressman Frenzel and will begin law school in September.

Senator **METZENBAUM**. We are happy to have you with us.

Mr. Michel, you have an impressive résumé and have been strongly endorsed for this nomination by those who know your work. But your inexperience in the types of cases that come before the Federal circuit seems to be a question that we really ought to address ourselves to.

What can you point to, with respect to this matter? What aspects of your background experience offer the best assurance that despite your inexperience in those particular areas, in substantive areas of the law, you will be able to meet your responsibilities as a member of the circuit court of appeals?

Mr. **MICHEL**. Mr. Chairman, may I start by pointing out that when this committee of the Senate created the court for which I have been nominated, it made clear in its report accompanying the bill, which I have carefully read, that it did not intend to create a highly specialized court or a court to be manned or womaned by technical lawyers or judicial specialists.

Secondly, I would say that I think that my training and experience for 7 years here in the Senate, and 7 years before that in the Justice Department, are rather good preparation because I have had to learn rapidly a fair amount about a great many subjects about which I initially knew very little or, in some cases, nothing.

Just to take one example, working with Senator Specter, I have gotten rather involved in nuclear weapons, nuclear arms control, and arms control treaties. That is an area of obvious technical complexity. There are other examples of the same sort.

Thirdly, I would say to the committee that I think that the experience of everything that I have done in 22 years as a lawyer has involved having to master new subjects.

Finally, I would refer the committee to the comments of, for example, some of the patent lawyers with whom I have met, where they tended to downplay technical knowledge in the patent law as an essential ingredient for someone to perform effectively as a judge. They tended to stress diligence and hard work. And, of course, the judges on this court have the benefit of briefs and arguments from lawyers who themselves are highly specialized, and I think that provided additional capability for sound decisions to be reached.

Senator METZENBAUM. You spent much of your career as a lawyer employed by the Federal Government, in either the legislative or the executive branch. The United States is oftentimes a party, usually the defendant, in many of the cases that come before the Court of Appeals for the Federal Circuit. When Americans feel they have been wronged by the Federal Government, taxpayers, Federal employees, small businesses, contractors with the government, Indian tribes for example—and I am not sure all of those would be within your jurisdiction—their lawsuits often end up in the Federal circuit.

Are you confident of your ability to put aside your prior associations with the Federal Government and render impartial justice between the United States and its citizens? I think the real question is you get a certain perspective when you are inside the Government. The question is now you are outside the executive and legislative branch, but you are now in the judicial branch.

Will you be able to separate that?

Mr. MICHEL. Mr. Chairman, I feel some confidence about that. You might note, from my record, that both as a local official and as a Federal attorney, I have spent about half my time defending what Government did, but the other half investigating and prosecuting apparent misconduct by Government officials or agencies.

Senator METZENBAUM. I have additional questions which I may want to submit to you, but I am watching the clock as well. Therefore, we may submit questions to you in writing.

Mr. MICHEL. Thank you, Mr. Chairman.

Senator THURMOND. Mr. Michel, one of the criticisms of judicial activism is a tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far reaching orders, extending to broad classes of individuals. Do you feel that this criticism is valid and would you please explain your answer?

Mr. MICHEL. Mr. Chairman, I think that your question actually has several parts to it. Obviously, every judge has to have, as his paramount pursuit, fidelity to the Constitution and the laws. In the case of the court that I aspire to, the laws are almost invariably acts of Congress.

I certainly have long training in discerning and analyzing congressional intent and I would expect to have no trouble in being faithful to and executing the intent of Congress with respect to the laws and also being able to determine what the intent of Congress was.

With respect to things like class actions, obviously they are covered by established legal principles and, again, fidelity to the application of those principles would be important. I do think it is important, too, for judges to always remember that they are not the law-maker or the law-giver but the law-interpreter and the law-applier. I think that with the training that I have had, I have those distinct roles very clearly in mind.

So I do not expect to have difficulty myself with being guilty of the sort of criticism which you describe.

Senator THURMOND. Mr. Michel, another criticism of judicial activism is a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities. Would you give our committee our views on this criticism?

Mr. MICHEL. Senator Thurmond, I think that the job of judges clearly is to decide cases, not to try to solve all the problems of society; and, in a similar vein, judges are not equipped or trained or mandated to serve in an essentially administrative or executive capacity.

Again, it is a question of understanding clearly the proper role and I feel that I have that very clearly in mind.

Senator THURMOND. At the Constitutional Convention in Philadelphia in 1787, I believe you were born there?

Mr. MICHEL. Yes, sir.

Senator THURMOND. So I imagine you have studied the Constitution a lot. There was quite a controversy over just what powers would be given to the central government. Then they provided that, including the Bill of Rights, that all powers not specifically delegated to the union were reserved to the States.

Is that your understanding of the Constitution?

Mr. MICHEL. It is. I am aware of all the amendments, not only the ones that are cited by one particular group or another. As I said at the outset, I think a judge's highest duty is to bear faithful allegiance and fidelity to the Constitution as it was written and as it has been interpreted by the Supreme Court over the years. I have no confusion about where the residual powers are.

Senator THURMOND. Thank you very much.

Mr. MICHEL. Thank you, Senator.

Senator SPECTER. Mr. Michel, in our 15 years of association, I have asked you many, many, many questions, doubtless thousands, and have gotten satisfactory answers. So I shall ask none today.

Thank you, Mr. Chairman.

Senator METZENBAUM. Our next witness is Malcolm Howard.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HOWARD. I do.

TESTIMONY OF MALCOLM J. HOWARD, A NOMINEE FOR U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Senator **Metzenbaum**. Mr. Howard, in response to a question in the committee's questionnaire concerning judicial activism, you expressed the view that some judges have gone beyond their constitutionally mandated authority and imposed their own ideas and beliefs. You stated that the judiciary should decide issues by referring to "the Constitution and proper legal precedent."

What, in your view, is encompassed in proper legal precedent?

Mr. **Howard**. Mr. Chairman, that is based on my strong belief that you, that elected representatives under article I, should make the laws. The interpretation of those laws that have come down through history, in the word of precedent, seem to cover most of the issues. I feel strongly that at the district court level, at least, the judges should look for the precedent and if sufficient search is made, that typically it can be found.

I do not have an agenda personally to attempt to "law make" as a Federal district judge.

Senator **Metzenbaum**. Are you suggesting or implying that the Supreme Court, in its rulings, has gone beyond the Constitution and proper legal precedent?

Mr. **Howard**. Not at all, Mr. Chairman, but my basic statement is that the precedent changes that from time to time take place, if it is a living Constitution, I feel have been addressed by our Supreme Court and appropriately that is the level that the major changes in precedent should take place.

As a district court judge, I think my role is more to follow that precedent and find what that precedent is.

Senator **Metzenbaum**. In response to the committee's questionnaire, you identified the ten most significant matters that you have litigated. Among the ten you listed your work in 1974 helping to defend President Nixon in impeachment proceedings before the House Judiciary Committee.

How did you become involved in assisting Special White House Counsel James St. Clair in that undertaking?

Mr. **Howard**. I was, in essence, completing a tenure, a self-set tenure as an assistant U.S. attorney in Raleigh, North Carolina. I was approached by my then boss, the U.S. attorney, who apparently had been contacted by the Department of Justice and/or the White House as to any persons who were soon to leave the employ of the U.S. attorney who had trial and research experience, inquiring if they would be interested in such a position.

I responded that I would be. At that time, that was, as you well know, sir, a celebrated case. Professionally, it was a most interesting course of employment for approximately 8 months for me.

Senator **Metzenbaum**. You were doing that as a part of the Federal Government?

Mr. **Howard**. No, Mr. Chairman, I resigned from the Department of Justice, I believe in mid-February 1974 and momentarily, within a day or so, then became a staff assistant with the executive branch at the White House.

Senator **Metzenbaum**. What exactly were your duties in the impeachment matter? As I understand it, you were involved with preparing a volume for submission to the committee concerning the events following the Watergate break-in. You also indicated that you accompanied Mr. St. Clair to all the impeachment proceedings.

What were your other responsibilities?

Mr. **Howard**. Mr. Chairman, basically I served as one of two deputy assistants to then special counsel, James St. Clair. In that role, my work involved administration. We had eight other attorneys. I supervised and coordinated the preparation for the House Judiciary proceeding.

I had little involvement in the Supreme Court case, *U.S.* versus *Nixon,* but I served as a staff supervisor and also an assistant special counsel directly under special counsel, James St. Clair.

Senator **Metzenbaum**. Have you mainly been what we in the practice would call a corporate lawyer?

Mr. **Howard**. Mr. Chairman, I would call it general practice. I live in a rural, agrarian area and I come before you today from a six-man law firm, having started as a sole practitioner myself, when I left the White House in 1974. We basically cover matters across the board, representing farmers, indigents, whomever comes to us in our practice.

Senator **Metzenbaum**. Have you done any pro bono work?

Mr. **Howard**. Some bit, Mr. Chairman. I have served as general counsel for an Eastern North Carolina Handicapped Center at no cost. We have the policy of seeing for any first conference people who have a potential legal problem at no cost. I have spent a great deal of time working with the farmers in eastern North Carolina at their meetings, making talks, explaining to them the law at no cost.

I have also assisted the Legal Service Corps activity in our area, principally in the area of bankruptcy, as an advisor in that matter, at no charge.

Senator **Metzenbaum**. Senator Thurmond?

Senator **Thurmond**. I notice you graduated from the U.S. Military Academy and also from Wake Forest University, but that you got your start, what sent you off so well, at The Citadel, in South Carolina. I congratulate you.

Mr. **Howard**. That is right. Thank you, Senator Thurmond.

Senator **Thurmond**. I think I would accept you on that alone.

Mr. **Howard**. I had two plebe years back to back, one at The Citadel and one at West Point. My wife tells me that is perhaps what is wrong with me today. [Laughter.]

Senator **Thurmond**. It is an honor to both of those excellent military colleges and you served your country well, I noticed, on military service from 1958 to 1962 and from 1962 to 1972. That is about 14 years, I believe, you had in the service.

Mr. **Howard**. That is active, Mr. Chairman, and then I stayed with the 120th ARCOM out of Columbia, South Carolina for 10 more years.

Senator **Thurmond**. Are you in the 120th ARCOM now?

Mr. **Howard**. I have now retired from it totally.

Senator **Thurmond**. At what rank did you retire?

Mr. **Howard**. Lieutenant Colonel.

Senator **Thurmond**. That speaks very well for you. I have tremendous admiration for people who served their country in uniform and who have served on active duty.

Mr. **Howard**. Thank you, sir.

Senator **Thurmond**. I just have two questions. Are there ever any circumstances under which a judge should attempt to establish new judicial precedents? If so, what are the criteria that you would use in order to determine the propriety of reversing an existing precedent?

Mr. **Howard**. In my opinion, it would be seldom that I would seek to establish a new precedent. Obviously, there is some authority for that but I would basically research and find the precedent that exists and I believe in most matters that would come before me, there is adequate precedent and I strongly believe that that would be my role.

Senator **Thurmond**. Mr. Howard, Article III, Section 1 of the Constitution invests in the Congress plenary power to ordain and establish such inferior Federal courts as it sees fit. To what extent, as a direction function of that power, is Congress equally empowered to limit the jurisdiction of lower Federal courts over various classes of cases and controversies?

Mr. **Howard**. Senator Thurmond, that is vested by section 1, of the power to establish the courts. I also believe that in section 2, the last sentence of the Constitution there, in section 2, refers to the Congress having powers to revoke and except. I believe those were the words that gives Congress the power to—Congress giveth and Congress taketh.

We recall that following the great War Between the States, that there were a great many changes in the judiciary activities brought about by Congress, changing the laws. I think that Congress does have, under the Constitution, certain rights, albeit somewhat limited, to change the jurisdiction of the article III court.

Senator **Thurmond**. Of inferior courts?

Mr. **Howard**. Absolutely, sir.

Senator **Thurmond**. I think that is about all the questions I have. I wish you well on the bench and I think you will enjoy your work there.

Mr. **Howard**. Thank you, Senator.

Senator **Metzenbaum**. Thank you very much. Mr. Howard.

Our next witness is Rudy Lozano.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Lozano**. I do.

TESTIMONY OF RUDY LOZANO, NOMINEE FOR U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF INDIANA

Senator **Metzenbaum**. Mr. Lozano, as I understand it, I think that you are the first Hispanic appointment of the administration during the 100th Congress. Is that factual?

Mr. **Lozano**. Mr. Chairman, I have been told that.

Senator **Metzenbaum**. I am happy to see you before us, sir and I am impressed with your answers to our questionnaire.

In response to the committee's questionnaire, you indicated you have tried some 50 to 100 major jury trials. You were also asked to mention the ten that you consider most significant.

Like all of us, the ones you mentioned, you won all of those. How about some of those that you lost?

Mr. LOZANO. Sir, in my experience where I have tried jury trials, I have lost probably less than five cases. Out of the five, I think there have only been one or two cases where the verdict has been above the amount of my evaluation. However, I have settled several cases for large sums of money. Up to the present time, I think the largest verdict against me has been $15,000, Mr. Chairman.

Senator METZENBAUM. Do you do plaintiff's work as well, or just defendants?

Mr. LOZANO. Yes, sir, I do both.

Senator METZENBAUM. Have you tried many plaintiff's cases?

Mr. LOZANO. Not that many. Because of my experience and the relationship that I have with other attorneys, I have been able to settle most of my plaintiff's cases. I have worked with other members of my firm who have tried several large plaintiff's cases with verdicts in seven figures.

Senator METZENBAUM. What would be the area that would be covered? You are from Valparaiso, I noticed. Where would you practice mostly?

Mr. LOZANO. Mr. Chairman, our cases are not only in the Lake County area, where we have our office, but also in the collar counties. I have also had cases as far south as Indianapolis and as far east as South Bend.

Senator METZENBAUM. Is Gary in your area?

Mr. LOZANO. Gary is in Lake County and I have had several cases there. In fact, we had an office in Gary for probably the first 12 years of my practice.

Senator METZENBAUM. The bulk of the litigation, I gather, has been in the personal injury field?

Mr. LOZANO. Yes.

Senator METZENBAUM. Have you handled any cases involving Federal statutory law, for example securities, civil rights, labor law?

Mr. LOZANO. I have had some cases in the civil rights area in which I have represented the defendants. I have represented numerous police departments, including the Indiana State Police. In some of this litigation, civil rights issues have been addressed.

I have not done any securities law.

Senator METZENBAUM. Have the civil rights groups indicated any concern about or in opposition to your appointment?

Mr. LOZANO. None that I am aware of, sir.

Senator METZENBAUM. Has your relationship with those groups been a good one or been a rather confrontational one?

Mr. LOZANO. I think that I have a very good relationship with the civil rights groups, Mr. Chairman.

Senator METZENBAUM. You indicate, in your response to the committee's questionnaire, that you have over the course of your career provided legal advice to disadvantaged persons on a pro bono basis. Tell me some of the kinds of matters that you have handled on that basis?

Mr. LOZANO. Recently, I had an individual come to me with a bill of some $10,000 to $15,000. He was working as a janitor and incurred the medical bill as a result of his wife's illness. He missed some payments and his paycheck was in the process of being garnished. I made arrangements so that he would not have to appear before the court on supplemental proceedings and he did not lose his home. I did not charge him.

I have also had some criminal cases where I have represented indigents under the Criminal Justice Act. I have also had people come to me for domestic relations problems, foreclosures and matters of that type.

Senator METZENBAUM. And those have been handled pro bono?

Mr. LOZANO. Yes, they have. And in some cases, I have done domestic relations work where I have reduced the fee substantially.

Senator METZENBAUM. As an officer of the Hispanic Bar Association, what has been the area of your involvement, or has it just been an organizational kind of activity?

Mr. LOZANO. It has been an organization in which we try to help young minority members and encourage them to go into the professions. Also, I have been very active trying to help young Hispanic lawyers in trial practice. I have given them advice when they have asked. I have tried to help them in obtaining experts and have given them ideas regarding litigation strategy.

Senator METZENBAUM. The number of Hispanics in the country, I would guess, had risen rather dramatically in the last 10 to 20 years, is that pretty accurate?

Mr. LOZANO. I think it is.

Senator METZENBAUM. And has the number of Hispanic attorneys increased proportionately?

Mr. LOZANO. I do not believe that is necessarily true. I think that the number of lawyers of Hispanic background are increasing more and more every day. The opportunities are there and I think they are finding that they can go forward, obtain a legal education, and enter into law firms or private practice.

Senator METZENBAUM. When you came out as a lawyer, how did you get started? How did you happen to go to where you presently live?

Mr. LOZANO. When I came out of school, I was 22 or 23 years old and I interviewed with five or ten different law firms. I was impressed with the firm that I started with, Spangler, Jennings, Spangler & Dougherty.

Senator METZENBAUM. They did a lot of FELA cases, did they not? Did they not do a lot of railroad cases?

Mr. LOZANO. No, they did not. They did mostly litigation; a great number of automobile cases, truck accident cases and products liability cases. When I started, they gave me what I felt was the best opportunity because they were not paying me a salary. They gave me an incentive basis for earning a living and, for me, that was a system that I wanted. If I wanted to work hard, I could earn more money.

They also gave me the opportunity to do a lot of litigation. In fact, I was in a jury trial within 4 months of starting with the firm. They have never held me back, as long as I wanted to try cases.

Senator METZENBAUM. Have you been with them all this time?

Mr. Lozano. I have always been with the same law firm.

Senator Metzenbaum. You have been described by one of your partners as an outstanding negotiator, tremendously successful in settling cases. What do you view as the role of a trial judge, in seeing to it that cases are disposed of not only by trial but by settlement?

Mr. Lozano. My experience, Mr. Chairman, along those lines, is that it is very important for a trial judge to play an active part in negotiations. I do not mean by that that a trial judge should twist the arm of an individual.

But in many cases, I have had a trial judge come forward and give an evaluation of the case. Oftentimes the plaintiff has one value, the defendant has another value and neither one of them wants to budge; it becomes a Mexican stand-off. However, when a judge comes forward and says that the case has this value, it helps break a deadlock and, in many occasions, helps settle a case.

With the backlog that we have in Federal court, I think that it is important for a Federal judge to be helpful. However, if the people want their day in court, I think that the courts owe the litigants that opportunity.

Senator Metzenbaum. Senator Thurmond.

Senator Thurmond. Thank you, Mr. Chairman.

Mr. Lozano, how does a responsible judge go about the process of interpreting seemingly open minded constitutional provisions, as the due process or equal protection clause?

Mr. Lozano. I would think that a judge would look to precedent, both from the Supreme Court and the appellate court and try to follow that.

Senator Thurmond. Mr. Lozano, Thomas Jefferson remarked shortly after the ratification of the Constitution that our Nation's particular security is a possession of a written Constitution. Let us not make it a blank paper by construction, he said.

Mr. Lozano, what do you think he meant by that warning, let us not make it a blank paper by construction?

Mr. Lozano. I think that Mr. Jefferson was saying that we should not give broad interpretations to the Constitution or to the laws. I think that we have a duty as district court judges to give a strict interpretation to the laws and to attempt to follow precedent.

Senator Thurmond. I am glad to hear you say that.

Thank you very much. I have no further questions. Thank you, Mr. Chairman.

Senator Metzenbaum. Thank you, Senator Thurmond.

Mr. Lozano, we are happy to have you before us, and happy to see a Hispanic appointed to the bench. It has been our contention that the administration has not appointed enough Hispanics or racial minorities or women.

Senator Thurmond. We better not go into that question now because that will take some time.

Senator Metzenbaum. No, I just said it has been our contention. It was just a sort of casual, throw-away remark. We are pleased about the fact that Mr. Lozano has been appointed. I think there have been 13 Hispanic nominees so far out of 340 nominees. How many Hispanics are there in this country?

Mr. Lozano. How many Hispanics where, sir?

Senator **Metzenbaum**. How many Hispanics in the country?

Mr. **Lozano**. I have no idea. I would imagine there are millions. As I understand it, Hispanics are probably the fastest growing minority group in this country.

Senator **Thurmond**. It is a credit to the administration, then, that they are appointing him, is it not?

Senator **Metzenbaum**. Absolutely. And if they do more of the same, it will be a greater credit. Absolutely.

Mr. Lozano, we are very happy to have you with us and we wish you well. We are happy to have your family with us, too.

Our last nominee is Stephen Reasoner of Jonesboro, Arkansas.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Reasoner**. I do.

TESTIMONY OF STEPHEN REASONER, NOMINEE FOR U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS

Senator **Metzenbaum**. Mr. Reasoner, as I said previously, to get such laudatory comments made about you by two Democratic senators when you are obviously a Republican appointee speaks very well for you. And then to have a Congressperson, who I gather is from your district, recommend you so strongly as well, is quite persuasive.

Federal judges are advised, both under the Judicial Conference Rules and the American Bar Association Code of Judicial Conduct that it is inappropriate for judges to belong to organizations that "invidiously discriminate" on the basis of race, sex or religion.

Do you think that under this standard you have a responsibility to determine whether any of the organizations to which you belong practice invidious discrimination?

Mr. **Reasoner**. I certainly do, under that guideline. I think that the Chairman may have reference to two organizations which I joined long ago and have not been to a meeting of in many years. Every organization in which I am actively involved in is certainly opposed to any sort of discrimination.

I am also proud to point out that I led the campaign to bring the first woman attorney into our law firm.

Senator **Metzenbaum**. Have you made any effort to open the doors of the two clubs that do have discriminatory policies?

Mr. **Reasoner**. As I said, Senator, I have not been to a meeting of either one of those clubs in one 20 years, and another in 15 years. Because of that, my answer would be no, because of my lack of involvement.

Senator **Metzenbaum**. In view of the American Bar Association Code of Judicial Conduct and the Judicial Conference Rules, do you intend to resign from those two clubs?

Mr. **Reasoner**. Your Honor, I have not——

Senator **Thurmond**. Excuse me. Let me ask you what clubs they are? I did not catch the name.

Senator **Metzenbaum**. He has not designated them.

Mr. **Reasoner**. I think the Chairman has referenced the Elks Club and the Masons.

I have been taking this process one step at a time and I have not really considered that. I would probably want to confer with many black attorney friends that I have and women attorney friends that I have. If I were convinced that that would be some impediment, that anybody might feel that they were going to get less than an absolutely fair review in a court in which I was presiding because of such membership, then I would certainly have to review that.

Senator **Metzenbaum**. Well, you might ask some black attorneys but I will tell you this, if I were a black attorney and you were the fellow who was going to be the Federal judge, I sure the devil would not be too anxious to tell you I think you ought to do this or do that. I think you have to recognize the sensitivity of somebody who next week, or next month might be appearing before you.

I think that this is not a new issue with this committee and it has been raised rather strongly with respect to a number of nominees. It seems to me that it is not a question of how a few black attorneys feel, but rather the fact that the Judicial Conference rules and the American Bar Association Code of Judicial Conduct both have indicated that they feel it inappropriate for judges to belong to clubs that discriminate on the basis of race.

Under those circumstances, it is a fact that Judge Kennedy, now Justice Kennedy, did see fit to raise the question in connection with one of the clubs to which he belongs and I believe he resigned from the other. That has not been an unusual procedure for nominees who have come before us.

I think it is only fair to say that I make it clear that the Chair is not determining and has no way of determining that either of these groups invidiously discriminate. But if they do, and I think that is a simple enough determination to be made by you—I do not think it is a responsibility of ours—then I think you ought to give some consideration to what your decision will be.

I think it is only fair to point out that when the matter comes before the Judiciary Committee as a whole, it is an issue to which a number of members have addressed themselves on previous occasions and I think we would like to hear from you before the Judiciary Committee takes the matter up for final consideration.

I do not mean to indicate that if you say you are not going to resign that you will not get confirmed. I do mean to indicate that there are members of the committee who have a concern about it.

Therefore, I think, as the one assigned to conduct this hearing, that I must advise you that it could become an issue. I would hope it would not and I think we would look forward to a response from you rather promptly, as to your position.

Senator Thurmond, do you have anything you want to add?

Senator **Thurmond**. On that point, I might say that one senator raised points here about a member of the Masons and held his confirmation up for some time. That is the only time in all of history that I have ever heard of that.

I have been a Mason since 1925. George Washington was a Mason. Thomas Jefferson was a Mason. Leaders of government have been Masons all down through the years.

The point was never raised until recently. But that man against which it was raised was confirmed. So I would see no reason for anybody who is a Mason to be ashamed of it. There is no discrimination. The national by-laws clearly set out that there is no discrimination and anybody of any race can join the Masons.

On account of their preference, most of the people in the minorities, I believe, have joined some Masons that had more blacks because they wanted to do that. But they are not prohibited from joining the Masons anywhere.

I just wanted to make that point clear to you, so far as the Masons are concerned.

As to the Elks, I am not entirely familiar with what the by-laws are on that point.

Senator METZENBAUM. So that the record may be clear, I am not that member who held it up.

Senator THURMOND. That is correct. You are not the member that did that and I might say that on our committee there are five members of our committee who are Masons. In the whole Senate, the Majority Leader is a Mason, Robert Byrd. In fact 18 members of the Senate are Masons.

I was surprised that point was ever raised, but our distinguished presiding officer here was not the one who raised that point, and I want to make that clear.

Mr. Reasoner, I consider judicial temperament to be a prerequisite for a Federal judge. Would you give me your thoughts on this subject? The reason I say that, I have seen personally some Federal judges yell and scold at lawyers, witnesses or jurors and I think it is inexcusable.

A Federal judge has all the power in the world, the power of life and death. I think the higher a man gets in public office, the more humble and more polite he ought to be. There is no reason for a Federal judge to act otherwise, in my opinion.

How do you feel about that?

Mr. REASONER. I agree with you completely, Senator. I have been in the courts and trying cases actively for 18 years. Most of my experience has been very, very pleasant. I think we have a high caliber of judiciary in the Federal and State courts in Arkansas.

But it is awfully hard to explain to a client who thinks they are coming in to court, for their day in court, for a fair trial, why a judge snapped at everything that was said. I feel that courtesy is one of the most important and often overlooked aspects of court.

I hope, if I am confirmed, that in time I can become a good judge. But I can be a courteous judge and I can conduct a courteous court the first day on the bench. That is one of the things that I know, at least, that I can do well from the very beginning, and I am determined to do that.

Senator THURMOND. Any Federal judge whose nervous system is so sensitive that he has to yell at jurors or witnesses or lawyers, I think ought to get off the bench.

Mr. REASONER. I would hope that I would have the integrity, if I did not have the kind of temperament that could remain calm, that I would not have presented myself to this committee and asked to be approved.

Senator THURMOND. Just looking at you, you seem to be a very calm man and one who could control your temper. The good book says he that can controlleth himself is greater than he that taketh the city.

I know sometimes people get outraged at statements or actions taken but they have got to control themselves.

Senator **METZENBAUM**. You and I had better think about that once in a while, both of us.

Senator **THURMOND**. You and I understand each other.

Mr. Reasoner, we frequently hear the argument that courts act in response to various social problems because the legislature has failed to act on its own. Well, in my opinion, there are many worthy goals that need to be accomplished but it does not necessarily mean that they have got to be accomplished at the Federal level.

For instance, if there is some subject that has never been delegated to the union, it is still under the jurisdiction of the States, according to the Constitution. I was just thinking that article I, section 8 lists most of the articles that have been delegated and the 26 amendments since the adoption of the Constitution.

But I would hope that all the judges will keep that in mind, that the Federal Government cannot go into every field of activity. It was supposed to be a government of limited activity. Things that the Federal Government could do for the States better than any State could do for itself, national defense, foreign affairs, interstate commerce and all those things.

So I think we have got to be careful how we go into other fields and there ought to be some Federal jurisdiction to allow them to go in the fields, otherwise it is a State matter.

There are many goals that ought to be accomplished but simply because a State fails to do its duty, does not mean the Federal Government should take onto itself a subject, if it has not been delegated.

I just wanted to make that point.

Senator **METZENBAUM**. Thank you.

Mr. Reasoner, so we do not have any misunderstanding of what I am suggesting vis-a-vis the matter of clubs, I think it would be helpful to you to find out whether the clubs accept women or blacks. Then I think it would be helpful to the committee if you would advise us as to what action, if any, you intend to take.

I am not saying to you, and I do not mean by inference to say to you, what your action should be. I think that is an individual matter. I felt obligated to raise the question with you because we had seen in your questionnaire your membership in these two clubs and just be good enough to let us know.

With that, thank you very much for appearing before us.

Mr. **REASONER**. Thank you.

Senator **METZENBAUM**. I thank everybody who has participated in this hearing, and the hearing stands adjourned.

[Whereupon, at 12:00 p.m., the hearing was adjourned subject to the call of the chair.]

ANSWERS TO ADDITIONAL QUESTIONS TO STEPHEN M. REASONER

QUESTION NO. 1: As requested at the hearing, would you please apprise the Committee of what the membership policies are of the Masons and Elks lodges to which you belong with respect to the admission of women and minority members? Also, would you please apprise the Committee of what you believe your responsibilities would be with respect to membership in those lodges under the American Bar Association Code of Judicial Conduct?

ANSWER: While I have not had the opportunity in the short time I have been back in my office to actually read the By-laws of these organizations, I have been advised by the Exalted Ruler of the local Elks Lodge and by the Secretary of the Dickinson Lodge of the Masons that the respective By-laws of the Elks and the Masons (and the local lodges) contain no racially restrictive provisions. These are fraternal organizations and, as such, do not admit women but do have auxiliary women's organizations.

As will be seen by the attached letter to Senator Metzembaum and to officials of the Elks and the Masons, due to my total lack of active involvement since my initiation in each of these organizations, I feel that it would be inappropriate to allow membership to continue to be an issue in the Committee's consideration of me and I have, therefore, chosen to resign. To the extent membership in these organizations would violate the Code of Judicial Conduct (which I do not contend that it does), this act will obviously satisfy any responsibilities I might have in regard to the Code.

QUESTION NO. 2: Would you please apprise the Committee of the details of the "friendly" lawsuit described by you in response to Part III of the Committee's questionnaire, and also indicate whether you think any ethical issues were posed by your representation in that suit and how you resolved any ethical issues?

ANSWER: Attached hereto is a copy of the complete file from that lawsuit which was styled Roy H. Jolley, et al v. Bill R. Clark, et al and was filed in the Western District of the Craighead County Chancery Court and docketed as number E 74-628.

A bond issue was passed in the late 1950's or early 1960's for the construction of a county library for Craighead County, Arkansas. An audit of the treasury funds indicated there was $34,013.11 more in collections than was needed to retire the bond indebtedness. On November 19, 1973, the

Quorum Court voted to transfer this money to the library for the operation and maintenance of the Craighead County Library. On November 15, 1974, several local citizens, represented on a pro bono basis by Penix & Penix Law Firm, filed a petition to have the order declared null and void. The purpose of the lawsuit was to test the validity of the order. Our law firm, acting through me on a pro bono basis, filed a demur and answer with a supporting brief. The plaintiffs filed a reply brief. The matter was submitted to the Honorable Terry Shell, deceased, who was the Chancellor and later became a United States District Judge. A decree was entered December 30, 1974 upholding the validity of the ordinance. When I used the word "friendly" in describing this lawsuit, I did in the context that the plaintiffs were not actually interested in trying to receive any of these monies. Indeed, the amount attributable to any but the largest tax payers would have been less than $7.00. The larger tax payers in the County signed waivers to receive any refund. These citizens agreed to allow themselves to be used as plaintiffs in order to test the validity of the order. The library did not want to begin spending money and later be subject to a claim that it would have to be paid back.

Dennis Zolper, who represented the plaintiffs, now has his own law firm and his telephone number is (501) 935-7090. I believe the Committee has already spoken with Bill Penix, with whose firm Dennis Zolper was associated at the time of the litigation.

I am at a loss to understand what ethical issue the Committee might have in mind as implied by the question. Not only do I see no ethical issue in representing a party in a case seeking to uphold the validity of an order passed by the unanimous vote of the Craighead County Quorum Court and which was fully briefed on both sides to the judge, but the Penix & Penix Law Firm and ours did not charge any fee regarding this representation. I think an argument could have been made, given the extent of the briefing that was done, that a fee could have been charged. However, all attorneys involved were acting on a pro bono basis for the good of the library. This money was used for several improvements at the library building, including facilities to serve the blind and physically handicapped in Craighead and Poinsett County, Arkansas.

QUESTION NO. 3: In your response to the Committee's questionnaire, you indicated that you have not had much experience in the criminal law area. Do you view that lack of experience as an impediment to your assuming the duties of a District Court judge?

ANSWER: This question goes to my greatest concern regarding my potential appointment. My initial efforts will be concentrated on (1) hard study; (2) attending all available seminars for judges on criminal law; and (3) hiring at least one law clerk who has had actual on-the-job experience clerking with a federal judge and who is familiar with criminal procedure. When I first began practicing law, I did not intend to be a trial lawyer and becoming one during mid-practice was an educational experience that I was able to complete successfully. With the help of a good staff and the learning aids available to federal judges, I sincerely feel that I can also learn this new area of law. I will use my very best efforts to insure that no accused, or the government for that matter, suffers due to my inexperience as a criminal lawyer.

Stephen M. Reasoner 2/19/88
Stephen M. Reasoner

IN THE CHANCERY COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

ROY H. JOLLY, ALBERT KOPERT,
R. Q. HAINES, GEORGE PURYEAR,
AND HUGH ATWOOD — PLAINTIFFS

v. no. C 74-627

BILL R. CLARK, DALE KELLER AND
HAROLD THOMPSON — DEFENDANTS

FILED
NOV 15 1974
OPIE CHAMBERS
CIRCUIT & CHANCERY CLERK

PETITION

Come the petitioners, Roy H. Jolly, Albert Kopert, R. Q. Haines, George Puryear and Hugh Atwood, for their cause of action against defendants, Bill R. Clark, Dale Keller and Harold Thompson, state:

1. That on the 18th day of October, 1974, the defendant, Bill R. Clark, entered an Order as Craighead County Judge, said Order appearing in County Court record [illegible], Page [illegible], a copy of which Order is attached hereto, marked Exhibit "A" and made a part hereof as though set out word for word.

2. That petitioners are tax payers and residents of Craighead County, Arkansas and have been such for more than ten years prior to the filing of this suit. The petitioners, as tax payers, have an interest in the funds which the defendants are attempting to disburse. The petitioners filed the suit as tax payers of Craighead County, Arkansas, and as representatives of all interested tax payers of Craighead County, Arkansas.

3. That the defendant, Bill R. Clark, acted without jurisdiction, without authority, and in violation of the law in entering the above Order. That no notice was given in the time and manner prescribed by law. That said funds should be distributed to all the interested tax payers in Craighead County, Arkansas, based on the pro-rata amount of taxes paid by each into said funds.

4. That the defendant, Bill R. Clark, County Judge of Craighead County, Arkansas, should be enjoined from taking any action to disburse and transfer the above funds and the County Court Order attempting to direct transfer of said funds should be declared null and void.

5. That Dale Keller, Treasurer of Craighead County, Arkansas, should be enjoined from transferring said funds pursuant to the County Court Order set out above, marked Exhibit "A".

6. That Harold Thompson, County Court Clerk, should be enjoined from issuing warrants pursuant to the County Court Order marked Exhibit "A".

7. Petitioners do not have an adequate remedy at law.

WHEREFORE, petitioners, tax payers of Craighead County, Arkansas, representing all other interested tax payers of Craighead County, Arkansas, respectfully pray that the County Court Order marked Exhibit "A" be declared null and void; that the defendants, Bill R. Clark, Dale Keller and Harold Thompson, be enjoined from attempting to disburse or transfer said funds by issuance of warrants or doing any other act or acts effecting said funds.

Penix and Penix
P. O. Box 1306
Jonesboro, Arkansas 72401

by

SMR:jw
10/17/74 (4)

IN THE COUNTY COURT OF CRAIGHEAD COUNTY, ARKANSAS

IN THE MATTER OF SURPLUS FUNDS
AND BONDS ACCOUNT FOR CRAIGHEAD
COUNTY LIBRARY

ORDER

On this 19th day of November, 1973, the court is advised by an audit of the funds in the Craighead County Treasury, as made by the State Controllers Office, that in addition to funds set aside to pay all of the existing bonded indebtedness created for the construction of the addition to the Courthouse for the housing of the County Library, including principal and interest when due, there remains in the treasury as excess, or surplus, of the special funds the amount of $34,013.11.

In keeping with the purposes and intentions of the original bond issues, and as provided by law, it is to the best interest of the county and taxpayers that these funds be used for the continued operation of the Craighead County Library and should be transferred to the Treasurer of the Craighead County Library Board for that purpose, as the Quorum Court directs by unanimous resolution this date.

IT IS THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the Craighead County Treasurer transfer to the Treasurer of the Craighead County Library Board the sum of $34,013.11 to be used for the operation and maintenance of the Craighead County Library, as directed by unanimous vote of the Quorum Court made this 19th day of November, 1973.

Bill L Peard
County Judge

FILED
OCT 18 1974
HAROLD THOMPSON
COUNTY & PROBATE COURT CLERK

11/29/74 (5)

IN THE CHANCERY COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

ROY H. JOLLY, ALBERT KOPERT,
R. Q. HAINES, GEORGE PURYEAR,
and HUGH ATWOOD

PLAINTIFFS

vs. No. E-74-628

BILL R. CLARK, DALE KELLER and
HAROLD THOMPSON

DEFENDANTS

DEMURRER AND ANSWER

Come the defendants, Bill R. Clark, Dale Keller and Harold Thompson, and demurrer to the petition of plaintiffs herein and state that the said petition does not state a cause of action in the Chancery Court and the plaintiffs remedy, if any, is by appeal from the order of the County Court to the Circuit Court.

For their answer, defendants Bill R. Clark, Dale Keller and Harold Thompson deny each and every material allegation of plaintiffs petition.

WHEREFORE, defendants pray the court sustain their demurrer, that the petition be dismissed, for their costs and all other proper relief to which they in equity be entitled.

BARRETT, WHEATLEY, SMITH & DEACON
Post Office Box 1245
Jonesboro, Arkansas 72401

By Stephen M Reasoner
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Demurrer and Answer was made by mailing a copy to Mr. Dennis Zolper, Penix and Penix, Attorneys at Law, P. O. Box 1306, Jonesboro, Arkansas, 72401, attorneys for plaintiffs, this 29 day of November, 1974.

Stephen M. Reasoner
Stephen M. Reasoner

FILED
NOV 29 1974
OPIE CHAMBERS
CIRCUIT & CHANCERY CLERK

SHK:jw
11/27/74 (5)

IN THE CHANCERY COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

ROY H. JOLLY, ALBERT KOPERT,
R. Q. HAINES, GEORGE PURYEAR
and HUGH ATWOOD PLAINTIFFS

vs. No. E-74-628

BILL R. CLARK, DALE KELLER
and HAROLD THOMPSON DEFENDANTS

FILED
NOV 29 1974
OPIE CHAMBERS
CIRCUIT & CHANCERY CLERK

BRIEF AND ARGUMENT OF DEFENDANTS

I.

Defendants Demurrer

Defendants' demurrer goes to the jurisdiction of the chancery court to hear this cause. Ark. Stat., 27-2001, specifically provides that the procedure for challenging an order of the county court is to appeal to the circuit court within six months after the rendition of the order.

In the case of Hughes v. Jackson, 213 Ark. 243, 210 SW2d 312, it was held that a petition to the chancery court for an injunction would not give chancery jurisdiction to review proceedings in the county court.

Even if there was not the statutory procedure for carrying this case to circuit court rather than chancery the plaintiffs would have had an adequate remedy at law.

II

The Surplus Funds Can be Appropriated

Three separate amendments to the Constitution of Arkansas provide for the levying of taxes for the payment of bonded indebtedness by schools, counties and cities. For the purposes under consideration here these amendments give the same powers and contain the same restrictions.

Amendment No. 11, adopted in 1925, provides that school districts may be authorized by general law to levy taxes

> "for the maintenance of schools, erection and equipment of school buildings and retirement of existing indebtedness for buildings".

This amendment contains the following provision:

> "Provided further that no such tax shall be appropriated for any other purpose, nor to any other district than that for which it is levied".

The millage limitations of Amendment No. 11 were repealed by Amendment No. 40 passed in 1948, but the restriction on appropriations as set out above was included in the new amendment.

Amendment No. 13, adopted 1926, gave authority to citizens of first and second class cities to issue bonds and to vote a special tax to pay for the bonds. This amendment contains the limitation that

> "...no money raised under the provisions of this amendment by taxation or by the sale of bonds for a specific purpose shall ever be used for any other purpose".

Amendment No. 17, adopted in 1928, but amended in 1938 to include county hospitals, gives electors of a county authority to vote to construct court houses, jails or hospitals and to adopt a tax not to exceed five mills to defray the cost and expenses.

Sec. 6 of Amendment No. 17 provides that bonds or notes may be sold and that the special tax levied to pay them must be

> "pledged as security for the payment of such evidences of indebtedness, and shall never be diverted to or expended for any other purpose, nor collected for any greater amount or length of time than is necessary to pay off and retire said prinicipal and interest evidenced by such bonds or notes".

The General Assembly of Arkansas, by Act 169 of 1931, Sec. 113 (Ark. Stats., 80-907) provided in the case of school bonds that

> "When all such maturities for such bonds in any year have been paid in full, or funds sufficient to pay them has been set aside in cash, ...the district may use for other school purposes the excess of funds remaining after making annual settlement".

This statute was construed in Oak Grove v. Fitzgerald, 198 Ark. 507, 129 SW2d 223, to allow a surplus in the bond fund to be transferred and used for general school purposes notwithstanding the inhibition of Amendment No 11 against appropriating tax funds for any purpose other than that for which they were levied. Justice Frank Smith, speaking for a unanimous court (129 SW2d at p. 224), said that statute must be construed as a part of the bond contract itself. The court said the passage of this statute had placed a different interpretation on the constitutional amendment and no one could complain as long as no part of the funds required to meet the bond maturities was diverted. Thus, it appears the court construed the constitutional inhibition merely to have been written to protect the bondholders and not to require a refund of every cent above that necessary to pay the bonds.

In the case of the City of Stuttgart v. McCuing, 218 Ark. 34, SW2d 209, the Supreme Court held that surplus fund in a street improvement district, which had been accumulated from a special tax voted by the people to retire bonds under the provisions of Amendment No. 13, could not be transferred to funds for improving the streets. However, the majority of the court in the four to three decision (234 SW2d at p. 212) indicated that, if there had been a legislative enactment allowing the funds to be transferred, such as existed for the schools in the case of Oak Grove v. Fitzgerald, supra, then the transfer would have been authorized under Amendment No. 13 in the same manner it was authorized under Amendment No. 11, because the general provisions of the school amendment (No. 11) and the cities amendment (No. 13) were the same.

The majority in City of Stuttgart v. McCuing, supra, also said:

> "From a practical viewpoint, since in all cases of refunds there must be necessary costs attached, such refunds would be subject to the burden of distribution. Obviously in some instances where excess funds are to be dealt with, the overall costs of refunding might exceed the surplus, or it might be found that in respect of each taxpayer the rule de minimis non curat lex (the law cares not for small things) should apply. In such cases, where no taxpayer's claim could be regarded as substantial, no refunds would be required. In other cases, however, as indicated, refunds should be made upon appropriate demand". (emphasis added)

It is significant that the three justices of the minority (George Rose Smith, Leflar and Danaway) in their dissent said that the majority, by refusing to allow the diversion of the excess moneys, was ordering a useless and wasteful expenditure of public funds and that such was not intended by the framers of Amendment No 13 nor the people in passing it. The three justices pointed out that it would never be possible to levy the amount of funds in any given year to meet the exact balance owing on bonds and that there would always be either a surplus or a deficit.

The restriction against the transfer of surplus bond funds contained in Amendment No. 17 to the Constitution, which applies to counties, for the purposes under consideration, is the same as Amendment No. 11, which applies to schools. Further, in the case of counties, there is statutory authority, the same as for schools, for the transfer of surplus bond funds, Ark. Stats., 20-1112 (which was sec. 1 of Act 122 of the General Assembly of 1927), reads in part:

> "...wherever any special taxing funds exist for the payment of outstanding bonds or refunding bonds or other legal purposes and all expenses and costs of said special taxing fund, including the principal and interest of all outstanding bonds have been paid or a sum sufficient to care for all outstanding bonds or interest outstanding has been created and collected through taxation or otherwise and remains in a sinking fund to meet said interest and bonds as they mature, and in addition thereto an excess or surplus remains in said special fund and is not needed nor required to meet said interest and outstanding bonds or other legal costs or expenses of said special taxing fund, in each and all of said special districts or special taxing funds, the excess or surplus so remaining as aforesaid shall be appropriate court orders be passed to and become a part of the general revenue funds of the county or counties wherein said special districts or special taxing funds exist".

The statute, quoted above, was passed prior to the time any of the bonded indebtednesses here involved were voted by the people of Craighead County. Thus, for the counties we have, in Amendment No. 17 and Ark. Stats. 20-1112 an identical legal question to that raised by Amendment No. 11 and Ark. Stats. 80-907 which apply to the schools. This identical legal question was decided in Oak Grove v. Fitzgerald , supra, which upheld the legality of the transfer of surplus bonds funds.

(It might be mentioned here that due to an error of the compiler, Ark. Stats. 20-1112 was omitted from Pope's Digest. And, probably for that reason Ark. Stats. 17-605 (sec. 1, Act No. 60 of 1943) was passed. Ark. Stats. 17-605 undertakes to give the counties the same powers they already had under Ark. Stats. 20-1112.

It should also be mentioned that Ark. Stats. 80-907 relied upon in Oak Grove v. Fitzgerald, supra, was inadvertently repealed by Act 384 of 1953 sec. 17, but sec. 8 of the 1953 act give again at the schools the right to divert surplus bond funds. This, of course, does not affect the doctrine of Oak Grove

v. Fitzgerald, supra, as related to the case at hand.)

See also Ark. Stats. 17-603 authorizing, in general a transfer of any surplus special funds to the county general fund.

Several months ago, steps were taken to notify all of the taxpayers who could expect to receive $7.00 or more of the surplus. None of these taxpayers showed any interest in seeking to have the money wastefully refunded. In fact, all of those contacted indicated a willingness to have the money used for the very purposes set out in the county court order and signed waivers to that effect.

CONCLUSION

It cannot be disputed that the constitutional amendment authorizing bond issues and limiting the use of tax funds levied thereunder by school districts, is identical, for the problem under consideration, to the amendment authorizing county bond issues. Further, for these purposes, the statutes of the legislature authorizing appropriation of surplus school bond funds and the statute authorizing appropriation of surplus county bond funds, are the same. With this established, nothing more than a reading of Oak Grove v. Fitzgerald, supra, and City of Stuttgart v. McGuire, supra, is necessary to see that the transfer of surplus bond funds ordered by the Craighead County Court was authorized.

Respectfully Submitted,

BARRETT, WHEATLEY, SMITH & DEACON

By Stephen M. Reasoner
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Brief and Argument of Defendants was made by mailing a copy to Mr. Dennis Zolper, Penix and Penix, Attorneys at Law, P. O. Box 1306, Jonesboro, Arkansas, 72401, attorneys for plaintiffs, this 29 day of November, 1974.

Stephen M. Reasoner
Stephen M. Reasoner

IN THE CHANCERY COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

ROY H. JOLLY, ALBERT KOPERT,
R. Q. HAINES, GEORGE PURYEAR,
and HUGH ATWOOD PLAINTIFFS

v. no. E 74-628

BILL R. CLARK, DALE KELLER and
HAROLD THOMPSON DEFENDANTS

FILED
DEC 4 1974
OPIE CHAMBERS
CIRCUIT & CHANCERY CLERK

BRIEF AND ARGUMENT OF PLAINTIFFS

I. DEFENDANTS' DEMURRER

Defendants have demurred to the petition of Plaintiffs, alleging Chancery Court does not have jurisdiction of this suit and that Plaintiffs' only recourse is by appeal to Circuit Court. There might be some merit to the claim of the Defendants if this suit had been brought merely to challenge some action of the County Court as being inexpedient, unjust or that it might involve an extravagant outlay. However, the basis of this suit is that the actions of Defendants are without authority of law and therefore void.

The Defendants overlook Article 16, Section 13 of the Constitution of Arkansas which says:

> "Any citizen of any county, city or town may institute suit in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever."

Ferrell v. Oliver, 146 Ark 599, 226 SW 529, held Article 16 Section 13 of the Constitution to mean that any misapplication of funds arising from taxation is an exaction from the taxpayers and any citizens can maintain suit to prevent such misapplication. The Supreme Court went on to say that there is good authority that even in the absence of an express constitutional provision, such as Article 16, Section 13 of the Arkansas Constitution, a remedy is afforded in equity to taxpayers to prevent misappropriation of funds on the theory that taxpayers are the equitable owners of the funds and that their liability to replenish funds exhausted by any misapplication entitles them to equitable relief against misappropriation.

Bowman v. Frith, 73 Ark 523, 84 SW 709, limited the jurisdiction of Chancery courts in suits brought as a result of the acti of the county court to situations where the action challenged is void. The Supreme Court said chancery would not properly have jurisdiction where the county court was challenged merely for errors, irregularities or mistakes of law or fact. In the case at hand, it can readily be seen that the plaintiff taxpayers are challenging a void action.

In Fones Bros. v. Erb, 54 Ark 647, 17 SW 7, 13 ALR 353, the Supreme Court said that the chancery jurisdiction of a case, such as the one at hand, was based on the fact that the action of the county court was challenged as being without authority of law. Such an order, the court said, would be void and could not properly create a charge upon taxable property of the county. The court pointed out that the Plaintiffs there could not have obtained adequate relief by certiorari or appeal, for want of jurisdiction arises from matters dehors the record. "The remedy by appeal is inadequate", the court said, "for the law does not give the taxpayer his day in court...Since the remedy at law is not adequate and complete, we are of the opinion that injunction is the proper remedy.

Thus it can readily be seen that Article 16, Section 13 of the Arkansas Constitution authorizes this action in equity and further that the adequate remedy for these taxpayers, injunction, lies exclusively in the control of equity. See also 8 Ark Law Rev. at p. 134.

II. ORDER OF THE COUNTY COURT WAS VOID.

In this case an effort has been made on the part of the Defendants to appropriate for other county purposes approximately $34,013.11, which was collected from the taxpayers of Craighead County, who voted both issues upon themselves for the exclusive purpose of constructing a court house and jail at Jonesboro and renovating a jail at Lake City.

The authority for these bond issues was given to the citizens of the county under the provisions of Amendment 17 to the Constituti of Arkansas. However, this amendment also restricts the use of fund levied to pay off bonds and notes issued to construct the courthousesand jail. Section 6 of Amendment 17 reads in part:

> "...provided, however, that such bonds or notes shall not be sold for less than the par or face value thereof and the same is hereby secured by said special tax levied for the purpose, which shall be and is hereby pledged as security for the payment of such evidences of indebtedness, and shall never be diverted to, or expended for any other purpose, nor collected for any greater amount or length of time than is necessary to pay off and retire said principal and interest evidenced by such bonds or notes." (Emphasis supplied)

Further, the Defendants can take no comfort from Ark. Stats. 17-605, which purportedly authorizes surplus funds to be appropriated for any purposes for which the county general revenue fund could be used. This is for the simple reason that this statute is unconstitutional. It runs head on into Amendment 17 which obviously prohibits such appropriation.

Amendment 13 to the Arkansas Constitution is similar to Amendment 17 except that No. 13 allows first and second class cities to exercise bond issuing powers which were given to counties under Amendment 17. Also Amendment 13 provides that:

> "...No money raised under the provisions of this amendment by taxation or by the sale of bonds for a specific purpose shall ever be used for any other or different purpose."

Amendment 11 to the Arkansas Constitution gives to school districts similar powers as those given cities under Amendment 13 and counties under Amendment 17. In Pledger, County Treasurer vs. Cutrell, et al, 189 Ark. 562, 74 SW 2d 646, the Supreme Court of Arkansas refused to allow an attempted transfer of school funds for a purpose other than those for which the taxes were levied. The court referred to this provision in Amendment No. 11:

> "No such tax shall be appropriated for any other purpose nor to any other district than that for which it is levied."

In Horne, County Treasurer, v. Paragould Special School District No. 1, 186 Ark 1000, 57 SW 2d 568, a chancery decree was affirmed which enjoined a county treasurer from transferring school funds, voted by the people for one purpose, to another purpose. The court referred to the constitutional inhibition that no tax shall be appropriated to any other purpose than that for which it was levied.

In City of Stuttgart, et al, v. McCuing, et al, 218 Ark 34, 234 SW 2d, 209, a taxpayer prevailed in suit against the city and its treasurer to enjoin the city from disposing of tax money raised to retire bonds. The Supreme Court held that where a special tax was voted by a city's taxpayers to retire bonds issued for a specific purpose, surplus funds in excess of money necessary to retire the bonds with interest, belonged to the taxpayers and not to the city.

CONCLUSION

Therefore, it is submitted that the order of the county court is void, and the County Judge, County Treasurer, and County Court Clerk should be permanently enjoined from disbursing said funds.

Respectfully submitted,

Penix and Penix
P. O. Box 1306
Jonesboro, Arkansas 72401

Solicitors for Plaintiffs
by Dennis Zolper

CERTIFICATE

I, Dennis Zolper, one of the attorneys for the plaintiffs in the foregoing pleading, state that I have served a copy of same on the defendants by mailing a copy to their attorney, Steve Reasoner, Citizens Bank Building, Jonesboro, Arkansas 72401 this December 4, 1974.

Dennis Zolper
Dennis Zolper

4;r

34/387

IN THE CHANCERY COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

FILED
DEC 30 1974
OPIE CHAMBERS
CIRCUIT & CHANCERY CLERK

ROY H. JOLLY, ALBERT KOPERT,
R. Q. HAINES, GEORGE PURYEAR,
and HUGH ATWOOD — PLAINTIFFS

v. no. E 74-628

BILL R. CLARK, DALE KELLER AND
HAROLD THOMPSON — DEFENDANTS

DECREE

This cause comes on to be heard December ~~16~~ 30, 1974, before Chancellor Terry Shell. Plaintiffs appear in person and by their solicitors, Penix and Penix. Defendants appear in person and by their solicitor, Stephen Reasoner. The matter is heard on oral testimony, arguments and written briefs of counsel. From all of which the court finds:

This cause was filed November 15, 1974, by plaintiffs who are taxpayers and residents of Craighead County, Arkansas, and all of whom have been so for more than ten years before the filing of this suit. Plaintiffs as such taxpayers have an interest in the funds involved in this litigation, and they are representative of all other interested taxpayers of Craighead County, Arkansas.

Service of summons was had upon all of the defendants on November 15, 1974, and 20 days have elapsed since the action was commenced, and service was had upon the defendants.

This court has jurisdiction of this cause and the demurrer of the defendants is overruled.

The action of the defendant Bill Clark as the duly qualified, elected and acting county judge and judge of the county court in entering the order of October 18, 1974, recorded in Craighead County court record "W" at page 297 transferring the surplus Jonesboro Court House bond funds and the surplus Craighead County library bond funds was in all respects proper and authorized by law. Further, it is proper and legal for defendants Dale Keller and Harold Thompson to perform the acts required of them under the provisions of said county court order.

The funds transferred pursuant to said county court order are in excess of those required to retire all the bonds involved, and the holders of such bonds are in no way jeopardized in their rights by the transfer of these funds.

IT IS **THEREFORE** considered, ordered, adjudged and decreed that the demurrer of the defendants to the jurisdiction of this court is overruled; that the order of the county court of Craighead County, Arkansas, of October 18, 1974, described above, is in all respects legal and proper; that the complaint of plaintiff taxpayers, being without merit in law and equity, is dismissed; that the plaintiffs pay the costs of this action.

Entered December 30, 1974.

Terry Shell
CHANCELLOR

Approved as to form:

Penix and Penix
Solicitors for plaintiffs
by Dennis Zolper

Stephen Reasoner
Solicitor for defendants
by Stephen Reasoner

STEPHEN M. REASONER
P. O. BOX 4057
JONESBORO, ARKANSAS 72403

February 19, 1988

Honorable Howard Metzenbaum
SENATE JUDICIARY COMMITTEE
Washington, D.C. 20013

Dear Senator Metzenbaum:

Today is my first day back in my office after being in Washington. Pursuant to the request you made at the hearing Wednesday, I have already begun my own investigation of the possibility of racially discriminatory practices as regards the Ancient Free and Accepted Masons of Texas and the Benevolent and Protective Order of Elks.

While I have not yet had the opportunity to study the by-laws of these organizations personally, I have been advised that they contain no racial restrictions. While time has not permitted me the opportunity to investigate actual practice, I found no basis for a characterization of these organizations as racially biased.

Nonetheless, as I advised the committee sometime ago in my questionnaire, I have not attended a meeting of either of these organizations in question since my initiations many years ago. Indeed, I have discovered that my dues are in a delinquent status with both lodges. Thus, it would appear disproportionate, to say the least, to allow membership in organizations in which I have been totally inactive for years to remain an issue in the committee's determination of my qualifications and I intend to remove it as an issue. Moreover, friends have advised me that it would be unfair to many persons, both black and white, Democrat and Republican, and male and female who have supported my seeking this position, if I were to permit this issue to continue to delay the confirmation process.

Accordingly, I am submitting letters of resignation today to the Elks and to the Masons. However, in so doing I want to reiterate that I do not do this out of a belief that these organizations are racially discriminatory. Moreover, I am sure the Senator is aware of the many good works that the Elks and Masons and their related organizations do in this country. I am simply acting to remove this issue.

Very truly yours,

Stephen Reasoner

Stephen M. Reasoner

SMR:ks

STEPHEN M. REASONER
P. O. BOX 4057
JONESBORO, ARKANSAS 72403

February 19, 1988

Mr. Ray Cherry, Secretary
Dickinson Lodge #1324
Ancient Free and Accepted Masons
P. O. Box 786
Dickinson, TX 77539

Dear Mr. Cherry:

On account of my lack of active participation in the Lodge, and to remove the issue of my membership from my consideration by the Senate Judiciary Committee, I am asking the Lodge to accept my resignation. Please let me know what amounts I may owe in back dues and I will send you my check in order to settle my account.

Sincerely,

Original Signed By
Stephen M. Reasoner

Stephen M. Reasoner

SMR:ls

FEB 15 '83

Mr. Ray Cherry, Secretary
Dickinson Lodge #1324
Ancient Free and Accepted Masons
P. O. Box 786
Dickinson, TX 77539

STEPHEN M. REASONER
P. O. BOX 4057
JONESBORO, ARKANSAS 72403

February 19, 1988

Mr. Danny Honnoll, Exalted Ruler
Benevolent and Protective Order
of Elks
Lodge # 498
906 Southwest Drive
Jonesboro, AR 72401

Dear Mr. Honnoll:

On account of my lack of active participation in the Lodge, and to remove the issue of my membership from my consideration by the Senate Judiciary Committee, I am asking the Lodge to accept my resignation. Please let me know what amounts I may owe in back dues and I will send you my check in order to settle my account.

Sincerely,

Original Signed By
Stephen M. Reasoner

Stephen M. Reasoner

SMR:ls

FEB 19 '[illegible]

Mr. Danny Honnoll, Exalted Ruler
Benevolent and Protective Order
of Elks
Lodge # 498
906 Southwest Drive
Jonesboro, AR 72401

PAUL R. MICHEL

Birth:	February 3, 1941	Philadelphia, Pennsylvania
Legal Residence:	Virginia	
Marital Status:	Divorced	2 children
Education:	1959 - 1963	Williams College B.A. degree
	1963 - 1966	University of Virginia Law School LL.B. degree
Bar:	1967	Pennsylvania
Experience:	1966 - 1974	Assistant District Attorney Philadelphia District Attorneys Office
	1974 - 1975	Assistant Special Watergate Prosecutor Watergate Special Prosecutors Office
	1975 - 1976	United States Senate Senate Intelligence Committee Assistant Counsel
	1976 - 1981	Department of Justice
	(1976-1978)	Criminal Division Deputy Chief, Public Integrity Section and Chief Counsel for the Koreagate Investigation
	(1978-1981)	Associate Deputy Attorney General
	1981 - present	United States Senate Counsel and Administrative Assistant to Senator
Specter		
Office:	303 Hart Senate Building Washington, D.C. 20510 202 224-9006	
Home:	8350 Greensboro Drive, #518 McLean, Virginia 22102	

To be United States Circuit Judge for the Federal Circuit

SENATE JUDICIARY COMMITTEE
QUESTIONNAIRE FOR JUDICIAL NOMINEES

1. Question: Full name (include any former names used).

Answer: Paul Redmond Michel.

2. Question: Address: List current place of residence and office addresses.

Answer: Office: 303 Hart Senate Building
Washington, D.C. 20510

Home: 8350 Greensboro Drive, #518
Mclean, Virginia 22102

3. Question: Date and place of birth.

Answer: February 3, 1941; Philadelphia, Pennsylvania.

4. Question: Marital Status

Answer: Divorced August 1987

5. Question: Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Answer: Williams College, Williamstown, Massachusetts, September 1959 to June 1963; B.A.

University of Virginia Law School, Charlottesville, Virginia, September 1963 to June 1966; L.L.B.

6. Question: Employment Record: List by year all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Answer: See Attachment 1.

7. Question: Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Answer: Yes. From about June 1966 to about June 1972, I was a member of the United States Army Reserve. I enlisted as a private, underwent basic combat and further training between April and August 1967, and was subsequently given a direct appointment as a 2d Lieutenant, USAR. I was a member of the 416th Civil Affairs Company, Norristown, Pennsylvania. After completing my six-year obligation in 1972, I resigned and received an honorable discharge. I am presently a member of the inactive reserves. I do not recall, or have available records of, my enlisted or officer serial numbers but believe that my military records are identifiable and retrievable by reference to my social security number: 172-34-8584.

8. Question: Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Answer: None.

9. Question: Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have

been a member and give the titles and dates of any offices which you have held in such groups.

Answer: At present, none. Previously, I was a member of the Philadelphia Bar Association.

10. Question: List all organizations to which you belong that are active in lobbying before public bodies.

Answer: None

Question: Please list all other organizations to which you belong.

Answer: See Attachment 2.

11. Question: Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Answer: Supreme Court of Pennsylvania, June 14, 1967
Superior Court of Pennsylvania, March 19, 1968
Court of Common Pleas of Philadelphia County, March 28, 1967
United States District Court of the Eastern District of Pennsylvania, September 19, 1969
United States Court of Appeals for the Third Circuit, October 8, 1968
United States Supreme Court, December 10, 1970

In 1983, I transferred my Pennsylvania Supreme Court Bar membership to "inactive status" because I had not practiced or lived in the state for over nine years. I believe that under automatic procedures, my inactive membership lapsed in 1986.

12. Question: Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Answer: See Attachment 3.

13. Question: Health: What is the present state of your health? List the date of your last physical examination.

Answer: Excellent. August 27, 1987.

14. Question: Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Answer: None

15. Question: Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Answer: Not applicable.

16. Question: Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the

terms of service and whether such positions were elected or appointed.

Answer: See Attachment 1.

Question: State (chronologically) any unsuccessful candidacies for elective public office.

Answer: None.

17. Question: Legal career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2 whether you practiced alone, and if so, the addresses and dates;

3. the dates, names, and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Answer: See Attachment 4.

Question: b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Answer: See Attachment 5.

Question: b. 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Answer: My areas of specialization have been extensively discussed above in Attachment 4. Throughout my 21 years of service as a government attorney, my clients, indirectly, were the citizens. I have, however, provided legal advice and assistance, directly, to the following present or former government officials: Senator Arlen Specter, Benjamin R. Civiletti, Esq., Charles F.C. Ruff, Esq., Judge Charles B. Renfrew, Esq., Lloyd Cutler, Esq., Judge Griffin B. Bell, and Richard L. Thornburgh, Esq.

Question: c. 1. Did you appear in court frequently, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in: (a) federal courts; (b) state courts of record; (c) other courts.

3. What percentage of your litigation was: (a) civil; (b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was: (a) jury; (b) non-jury.

Answer: See Attachment 6.

18. Question: Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail

the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Answer: See Attachment 7.

19. Question: Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Answer: See answers to questions 17 and 18. (Attachments 6 and 7)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Question: List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Answer: None.

2. Question: Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Answer: I believe I am conflict free because I own no corporate stock, etc. I would, however, file with the Chief Judge and any other appropriate official itemization of stocks or other assets I may subsequently inherit, if any.

Question: Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

Answer: None.

3. Question: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Answer: No.

4. Question: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.

Answer: See attached Report, SF 278. (Attachment 8)

5. Question: Please complete the attached financial net worth statement in detail (Add schedules as called for).

Answer: See attachment 9.

6. Question: Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Answer: As Senator Specter's Administrative Assistant, I played an advisory role in his 1986 re-election campaign. I held no formal position in the campaign or with any campaign committee.

III. GENERAL (PUBLIC)

1. Question: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Answer: I have devoted my 21-year legal career entirely to public service as a government attorney. Much of this work was responding to and helping fulfill legal and related needs of the disadvantaged. My estimate for my 6 years in the Senate, for example, is that I was working for the disadvantaged one third of my total hours. For the first 12 years after my graduation from law school in 1966, I was a local and then Federal prosecutor, working to vindicate the interests of particular crime victims and their communities, many of whom were disadvantaged. Specific matters included efforts to help Senator Specter preserve the legal aid program and the independence of the Civil Rights Commission, and to reform the welfare system.

2. Question: The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies?

Answer: No

3. Question: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated.

Answer: I consider that for purposes of the Court of Appeals for the Federal Circuit, there is no selection commission in the jurisdictions in which I now work or reside or previously worked and resided (Washington, D.C., Virginia, and Pennsylvania).

My name was proposed in October 1986 to the Justice Department by Senator Specter.

I was interviewed separately by about six different Justice Department officials in December 1986, including Deputy Attorney General Arnold Burns and Assistant Attorney General (Legal Policy) Stephen J. Markman. My qualifications were reviewed both for the Court of Appeals for the Third Circuit and the Court of Appeals for the Federal Circuit.

Various people wrote or spoke on my behalf, including Judge Renfrew, Judge Sofaer, Judge Becker, Ben Civiletti, Chuck Ruff, Senator Specter, and Senator Thurmond. In June I was informed I had been selected.

4. Question: Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

Answer: No.

5. Question: Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

d. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Answer: I believe the duty of a Circuit Judge is to uphold and apply the laws as enacted by the Legislative Branch, except such statutes as are unconstitutional from the clear meaning of the Constitution or applicable Circuit or Supreme Court decisions. In addition, all Federal judges are obligated to follow rules and regulations duly enacted pursuant to proper delegations of authority from Congress, including the Federal Rules of Civil and Criminal Procedure and provisions adopted by the Judicial Conference. Judges should do so rigorously and regardless of the outcome as viewed from any particular ideology.

Adherence to judicial precedent is, in my view, as important as adherence to legislative mandate. In all cases, judges should apply the law as it has been established by appellate courts and Congress rather than imposing their personal preferences or policy views on the other branches and levels of government and on society. Certainly, it is not the function of a Circuit Judge to apply the law as he or she might have attempted to shape it, had he or she been a member of Congress or a Supreme Court Justice.

On the other hand, an appellate judge must be aware of the evolution of the law and in some cases may have to attempt to anticipate how the Supreme Court would decide a Constitutional issue if it had the particular case. In such cases, he or she may have to "extrapolate" from past Supreme Court decisions. For example, where logic and prudence suggest similar outcomes for analogous cases, a Circuit Judge should apply a precedent to a new situation if it is sufficiently similar. There may also be situations plainly not foreseen by legislators just as there have been situations not foreseen by the framers of the Constitution. Finally, there may be unintentional (or intentional) ambiguity inherent in a particular statute. In order to decide cases in such situations, courts must "interpret" the law but do so carefully and within narrow limits established by prior legislative and appellate decisions.

I believe judges should take care not to try to address broad social problems by judicially legislating broad programs, but should limit themselves to adjudicating particular cases. At the same time, judges are often applying statutes intended to solve broad social problems with broad programs. Accordingly, in resolving particular grievances, an element of problem solving is unavoidably implicated.

With respect to class actions, where authorized by law they are proper regardless of the size of the class. As long as the requirements are duly met, the judge has no option.

As to the breadth of duties imposed by courts on governments or society, an abstract answer may be unilluminating. Some constitutional and some statutory commands are very broad; many are not. While I believe judges should not strain to impose broad duties on governments, there may be rare cases where that is compelled by faithful adherence to Constitutional or legislative command.

With respect to jurisdictional requirements, such as standing and ripeness, I believe that established doctrines should be followed rigorously regardless of the importance of promptly resolving the issue presented. Rather than distort these doctrines in order to accept and adjudicate the case at hand, the better course is to decline jurisdiction unless and until a proper case is presented. At the same time, I do not favor straining to find a highly technical or far-fetched rationale for avoiding deciding cases on their merits.

Generally speaking, I do not favor trial judges acting as administrators for prison systems, school systems and so forth. There may be rare extreme cases, however, where such a role is justified because no other arrangement will suffice to enforce and uphold the law.

To suggest that an excessively "activist" judge acts improperly because of a "tendency" to do this or that may not be the most helpful way to articulate the issue, if use of such terms implies that one need look only to the result to see the excess. I would think that rather, one should look primarily to the facts presented and the applicable law to determine whether the result should be seen as overbroad or otherwise excessive.

If by "tendency," however, we mean that a judge is overly eager, regardless of justification in the facts and the law, to effectively supercede an Executive official, then such a judicial predisposition, in my view, certainly would be improper. If the justification for massive judicial intervention amounts to little more than the judge thinking to himself "that official is performing poorly and I could do it better," then the judge is assuming the role not of a judicial officer, but of a cabinet officer or other superior of the particular executive official. Where a judge tries to reshape a statute in the name of improving it, again he has exceeded a proper judicial function and assumed the role of a super legislator.

Surely, a judge should have no difficulty deciding between imposing his own will (opinion, preference, value) and applying the expressed judgment of the legislature, no matter how improvident he thinks it may be or how superior he thinks his own view. In this sense, a judge may "disagree" with decisions he renders.

Of course, judges are necessary precisely because laws are neither self-executing nor self-explicating, and whether or how a particular law even applies in a particular instance is often unclear. It is in this grey area that a judge's highest faculties for analysis and judgment come into play and where extraordinary effort to master the facts is often required for a sound decision to be reached.

We Americans are fond of saying our government is one of laws, not men. But it is men (and women) who both make and apply the laws. What we must mean, then, is that in doing so, they consciously act within the confines of their respective roles as legislators, executives, and jurists, each respecting the powers and prerogatives of the other. For the judge, that means that the legislative will, unless embodied in an unconstitutional enactment, is entitled to be implemented without respect to the judge's personal views as to its wisdom, as are the prior decisions of equal or higher courts that are not distinguishable. When he so confines his own exercise of judicial power, a judge acts in the highest traditions of American law.

These are my convictions about the proper scope of and limits on the role of a federal appellate judge.

ATTACHMENT 1
Page 1 of 1

1981-1987	Counsel and Administrative Assistant, Senator Arlen Specter
1978-1981	Associate Deputy Attorney General, U.S. Department of Justice; Acting Deputy Attorney General, December 1979-February 1980
1976-1978	Chief Counsel, "Koreagate" Investigation and Deputy Chief, Public Integrity Section, Criminal Division, U.S. Department of Justice
1975-1976	Assistant Counsel, Senate Select Committee on Intelligence
1974-1975	Assistant Special Watergate Prosecutor
1966-1974	Assistant District Attorney, Philadelphia (1967-1971) (law clerk, 1966) Deputy District Attorney for Investigations and Chief Counsel, Special Investigating Grand Jury (1972-1974).

Attachment 2
Page 1 of 1

Williams College, Society of Alumni
University of Virginia Law School Alumni Association
Tuckahoe Recreation Club, Mclean, Virginia
Delta Psi Association (Fraternal)
Pennsylvania Society of Washington, D.C.

Attachment 3
Page 1 of 1

1. The Need for a New Federalism in Criminal Justice, by Arlen Specter and Paul R. Michel, The Annals of the American Academy of Political and Social Science, Volume 462, July 1982, pp. 59-71.

Under Senator Specter's guidance, I wrote this article for the Annal's Special Edition, "The American Judiciary: Critical Issues." He then edited it. Some of its suggestions were later implemented by Congress and the Justice Department. Other authors included Judge Wald, Judge Mikva and Judge Bell.

2. Senate Report No. 98-190, the Armed Career Criminal Act of 1983.

With Senator Specter, I conceived the idea for this statute which was enacted as part of the Omnibus Crime Bill of 1984 and which has since been implemented and, based on its initial success, expanded to cover additional predicate offenses such as drug trafficking. The bill makes it a federal offense for a person with two or more predicate convictions to possess a firearm. The bill imposes mandatory sentences of 15 years to life imprisonment.

✓ I drafted the bill and the report. Both were edited by Judiciary Committee staff.

3. Federal Bureau of Investigation Charter Act of 1979: S-1612

An outgrowth of the Church Committee hearings, Watergate and other 1970's revelations of FBI abuses, this bill set forth a Charter for the law enforcement and miscellaneous functions of the FBI (everything except foreign counterintelligence).

It represents the work of many people in addition to me. The original draftsman was Inspector John Hotis. I was, in effect, the principal editor, arbitrator, revisor, negotiator with Congress, advocate, and so forth. In 1979, I testified eleven times before the Senate Judiciary Committee on the Charter.

Attachment 4
Page 1 of 21

Becoming a Public Interest Lawyer and Litigator

By the end of a summer internship preceding my final year of law school, I had already chosen a career of utilizing legal institutions to resolve major issues affected with the public interest. Those three summer months in 1965 in the United States Attorneys Office for the District of Columbia convinced me that the place to begin was as a public prosecutor in an elite office. Accordingly, during the Fall of my third year, I considered long-established and renowned prosecutors' offices such as the Southern District of New York, the office of Frank Hogan in Manhattan, and the U.S. Attorneys Office in Washington. Ultimately, however, I joined the Philadelphia District Attorneys Office.

Because they set the course of my legal career over the next 21 years, my reasons for doing so are set forth below. They were four: First, Philadelphia, my home city, was suffering the ill effects of declining and increasingly corrupt local government, and was thus clearly in need of active and aggressive prosecutions to which I felt a strong personal desire to contribute; second, Arlen Specter, who had just been elected in November 1965 at age 35 following service with the Warren Commission and an investigation of dishonest Philadelphia magistrates looked a good prospect to make history with an office of bright, young lawyers and I wanted to help make history, at least on a local level; third, because it was so young an office, I expected I could gain litigation experience and administrative responsibility even faster there than anywhere else and I wanted to take on the most difficult and important cases as soon as possible; and fourth, my godfather and uncle, George B. Turner, an antitrust partner at Cravath, Swaine & Moore, whose example was the reason I became an attorney in the first place, had wondered aloud whether he had been wise to decline a similar opportunity with Tom Dewey. So, I deliberately chose public service as a government attorney in my first and each succeeding job.

1966-74: Assistant District Attorney

My initial experiences were those of most young prosecutors in big-city offices: trying cases, running investigations, briefing appeals, arguing motions, sometimes all of these on the very same day. For years, most days I was in court all day.

Graduating from law school in June 1966 at the crest of the Supreme Court's revolution in constitutional-criminal law, I quite naturally concentrated on the issues raised by the great decisions of that decade such as *Mapp v. Ohio*, *Miranda v. Arizona*, and *United States v. Wade*. Pre-trial motions to suppress evidence or dismiss indictments became a specialty as did post-conviction petitions under a Pennsylvania statute codifying *habeas corpus* and *coram nobis* relief. Within just my first year, I litigated hundreds of such motions and petitions. Before concluding nearly eight years' service in the District Attorney's Office in 1974, I had litigated thousands. In addition, by my best estimate, I had briefed more than 100 appeals, in many of which I also presented oral argument. As a further consequence of this specialization in the constitutional and statutory requirements for due process, I taught classes, drafted materials, and provided consultations for other prosecutors and for police.

Because of my knowledge of federal constitutional authorities, I also litigated habeas corpus matters in federal court. In addition to, in effect, re-trying old cases of convicted and imprisoned petitioners in the district court, I also briefed and argued some of these petitions before the United States Court of Appeals for the Third Circuit. Some of these appeals involved novel issues of retroactive application of constitutional rights newly established by the Warren Court.

Finally, one of the most instructive features of the post-conviction litigation arose from the routine practices of petitioners alleging "ineffective assistance of counsel." Thus, I had the opportunity to examine many attorneys, including some truly outstanding ones, as to why they had decided to do this or not to do that. A fascinating experience, it was somewhat like being a young surgeon reviewing allegedly mishandled operations by more experienced doctors.

Later, I was promoted to Chief of the Motions Division, supervising the small group of attorneys who litigated pre-trial and post-conviction motions in nearly all the prosecutions in Philadelphia. After trying some 100 cases myself, in 1971 I became responsible for all trials except those involving juveniles. These cases numbered in the hundreds per year for jury trials and in the thousands for bench trials. Including guilty pleas, they numbered in the tens of thousands per year.

As Chief of Adult Prosecution, I studied the causes of delay in the courts in great detail. One consequence was that Mr. Specter and I amassed voluminous evidence proving the need for 30 additional judges for Philadelphia. With this information, we drafted a mandamus complaint for possible filing in the Supreme Court of Pennsylvania. It would ask the court to compel the state legislature to create 30 additional judgeships in Philadelphia. After the draft complaint was widely circulated among leaders of the bench, bar and Legislature, the judgeships were created. As a result, both civil and criminal justice in Philadelphia greatly improved. I have since reflected with some sense of irony and almost amusement that perhaps my most important lawsuit was one never actually initiated and that my best pleading was one never filed.

The largely administrative responsibilities of Chief of Adult Prosecution were later displaced by very different duties when in 1972 I assumed responsibility for all the investigative work of the office as Deputy District Attorney for Investigations. In addition to traditional areas such as organized crime and political corruption, we also conducted innovative investigations into high-level corporate fraud and environmental pollution. We once sued the regional transit authority as a common nuisance because its bus fleet was so poorly maintained as to cause extensive and unnecessary exhaust discharge. The authority, represented by Lew Van Dusen, promptly instituted a greatly improved maintenance program.

But the heart of the work was governmental corruption which we investigated from 1972-74 through a Special Investigating Grand Jury for which I served as Chief Counsel. During its 19 month tenure, this jury issued 22 voluminous Presentments, many of which resulted in the prosecution and conviction of important state and local officials, including a Philadelphia City Councilman. After Mr. Specter left office, the ongoing investigations and several pending prosecutions were arbitrarily and abruptly ended by the subsequent District Attorney. In March 1974, I resigned in protest. The transcripts of the jury's work, with court permission, were furnished to Federal authorities and over the next several years were the basis for their developing many important prosecutions. The judge supervising the Special Investigations Grand Jury, Harry A. Takiff, was so appalled at the conduct of the new District Attorney who refused the Court's request to summon and staff a follow-on jury that a special state prosecutor was appointed to carry forward the investigations.

Although I had hoped to finish all the investigations in progress as of March 1974, my seven-year tenure as a local prosecutor was not only longer than I had originally anticipated, but was a rather complete experience as well, including not only quasi-criminal habeas corpus cases but also truly civil issues. For example, I litigated a massive constitutional challenge to the Philadelphia juror selection system that alleged, inter alia, racial, gender and class discrimination. This test case involved application of statistical analysis to voluminous records covering many years. In a similar challenge to the bail bond system, the plaintiffs were represented by a team of brilliant attorneys headed by Professor Tony Amsterdam, then of the University of Pennsylvania Law School. Again, statistics, probability theory, and sampling methodology were critical to the case. In both matters, I was successful in showing that permissible causes for observed disparities were as likely as the alleged illegal discrimination. These two cases also gave me invaluable experience in detailed examination of the application by Executive Branch agencies of prescribed standards and procedures.

Another major constitutional test case that I litigated in 1969 sought to have the Common Pleas Court place the Philadelphia prison system in receivership and release its inmates on grounds, which in later years became common, that their conditions of confinement constituted "cruel and unusual punishment" and also violated various state statutes. The case, Commonwealth v. Cephus Bryant, continued for many years under a special master appointed by the Court and produced many needed reforms and improvements. In the first phase, however (which I handled), the Court was persuaded that plaintiffs had not proven systematic or intentional deprivations and no prisoners were released before completing their sentences or being paroled.

Assistant Special Watergate Prosecutor: 1974-75

By the end of my years as a local prosecutor, I had gained considerable experience in the investigation of complex cases of financial corruption by public officials. After my resignation in conscience from the Philadelphia Attorneys' Office, I was hired by

Leon Jaworski and Henry Ruth to join the Watergate Special Prosecutors Office (formally, the Watergate Special Prosecution Force) to direct a new investigation into President Nixon's finances and an alleged "slush fund" maintained for him by Charles "BeBe" Rebozo and based on several hundred thousand dollars in cash funds provided by Howard Hughes and other U.S. and foreign millionaires. This investigation was pursued for 16 months all around the country by a specially-selected team of IRS agents and in a Grand Jury in Washington, both under my supervision.

Among the difficulties encountered were tracing funds through international banking channels and casino cash operations. Among the distinguished attorneys who opposed me were Edward Bennett Williams, James Sharp, Charles Rhyne, and Walter Bonner. Among the many witnesses I questioned were John Ehrlichman, Rosemary Woods and President Nixon.

The painstaking detail of this "networth" investigation was evidenced by the fact that more than 300 subpoenas were issued. In fact, the litigation surrounding the investigation consisted principally of motions before the late Judge George Hart of the District Court for the District of Columbia seeking to curtail issuance of subpoenas and narrow the production of documents. At one point, Jim Sharp, counsel for Mr. Rebozo, who claimed the investigation of accounts of customers at his Key Biscayne bank was driving them away, produced a massive civil complaint in draft that was designed to drastically circumscribe future subpoenas. It was, however, never filed.

In the end, the return to the donors of the money, the absence of any quid pro quo, the unavailability as a witness of Howard Hughes who was hiding in the Bahamas and the resignation and pardon of President Nixon combined with other factors to make any potential prosecutions inappropriate and unwarranted. Therefore, I did not recommend any prosecutions despite considerable pressure from the press and Senate Watergate Committee staff.

Assistant Counsel, Senate Intelligence Committee: 1975-76:

As the "Hughes-Rebozo Investigation" was winding down in the summer of 1975, Chief Counsel Fritz Schwarz, of the Senate Select Committee on Intelligence (now Corporation Counsel for the City of New York) asked me to help him direct the Committee staff which was then in mid-stream on investigations of alleged improprieties by the CIA, the FBI and other U.S. intelligence agencies. These investigations focused on whether in investigating American dissidents and others, these agencies had violated the law and used improper or illegal methods. On the basis of these investigations, the Committee held highly-publicized hearings throughout the Fall of 1975. In preparation therefore, numerous depositions were taken by me and by other attorneys. Among the attorneys involved with this matter was Mitch Rogovin, then Special Counsel to the CIA, with whom I negotiated agreements on declassifying documents and limiting the scope of hearings to protect sensitive intelligence sources and methods. Among those I deposed was former CIA Director Richard Helms.

In early 1976, the Committee issued detailed reports assessing the impact of these intelligence activities on the legal rights of

Americans, and containing specific recommendations for reform, many of which were subsequently adopted.

My role included helping to frame many of those reform recommendations, particularly with respect to the [illegible] and the F.B.I. In addition to reviewing the facts as to the questionable practices, this endeavor also required evaluating the shortcomings of the governing statutes and internal regulations. The Committee's recommendations included a proposal for the drafting of a statutory charter for the F.B.I., a project in which I was fortunate enough to later play a principal role as Associate Deputy Attorney General.

The theme of the entire effort was bringing the intelligence agencies firmly under the rule of law and establishing their accountability to the Congress. Although the Committee made an excellent start, drawing individual programs, and the activities of entire agencies such as the National Security Agency, into a legal framework under the Fourth Amendment, really for the first time, the work has yet to be completed as is evidenced by the current national focus on the Iran-Contra affair. Nevertheless, the results achieved by the temporary Select Committees in 1975-76 persuaded the Congress to institutionalize their work by creating permanent committees which were duly established and today carry forward this endeavor. I am still extremely proud to have played some small role, first in establishing in Watergate that the President is not above the law, and then in the Senate that the intelligence agencies, too, are subordinate to our laws and legal institutions.

Deputy Chief, Public Integrity Section and Chief Counsel for the Koreagate Investigation: 1976-78

At the conclusion of the Intelligence Committee's work in April 1976, I was hired by Richard Thornburgh, then Assistant Attorney General in charge of the Criminal Division, to help establish the new Public Integrity Section. Although some of its early cases were interesting enough (such as the investigation of former Congressman Wayne Hays and Elizabeth Ray), my primary duties soon shifted from supervising the section attorneys to directing a massive new investigation. Named by the press "Koreagate," this grand jury investigation involved published allegations that more than 100 named members of the Congress had received bribes, illegal campaign contributions or other improper payments and gifts from agents of the Korean Central Intelligence Agency and from certain Korean-American businessmen, including Tong Sun Park. Park was represented by Bill Hundley, the Korean Government by Tony Essaye and Dan Gribben, all of whom worked with me extensively. Scores of witnesses were questioned on various aspects. One line of inquiry involved whether high government officials knew of but ignored early indications of the Korean payments. Among those I questioned in this regard were John Mitchell and Henry Kissinger.

Moving this investigation forward required extensive classified information and massive assistance form our CIA and other U.S. intelligence agencies (which we pressed for and which were fully provided). CIA General Counsel Tony Lapham and NSA Counsel Dan Silver were instrumental, following our extensive discussions, in providing classified information under carefully developed conditions as to its use.

An issue arose whether the investigation should be carried out by the Justice Department or by a Special Prosecutor. To demonstrate both the basis for carrying forward a vigorous investigation and the lack of any conflict of interest or involvement by White House or Department officials, I wrote an extensive evidentiary and legal analysis (classified) for the new Attorney General, Judge Bell. We also had extensive meetings. He accepted my analysis and we went forward.

Later, we needed, pressed for and obtained the cooperation of the Korean Government (Republic of Korea) in order to secure access to Tong Sun Park for depositions in Korea and also return to the U.S. for testimony. To achieve this, Ben Civiletti (then Assistant Attorney General, Criminal Division) and I went twice to Korea to negotiate. Ultimately, we were able to conclude a Mutual Prosecution Assistance Agreement which formed the basis of progress in the case. In January 1978, I spent a full month in Seoul, Korea, deposing Mr. Park daily. I also arranged his return here for Grand Jury, trial and Congressional testimony.

These efforts were greatly assisted by superlative work by a team of six I.R.S. and 12 F.B.I. agents who worked full time on this 27-month investigation, under my personal direction. Although several Congressmen were indicted and convicted, the principal result of the investigation was a most unusual but important one. Although prosecutors are trained to try both to convict the guilty and clear the innocent, the opportunity and capability to do the latter is rarely presented. Here it was. Through careful tracing of the funds available to Tong Sun Park and extensive (almost daily) use of polygraph examination and other means, we were able to establish that nearly all of the Congressmen whose names appeared on lists with amounts like "$30,000" by each name, in fact had received nothing. Another gratifying result of this investigation was that, according to sensitive intelligence sources, Korea and other countries which had sought to implement programs to "buy" influence with vulnerable Congressmen promptly abandoned these programs altogether. Moreover, Congress strengthened its ethical rules and the reporting and investigating mechanisms for enforcing them. It was clear that both developments were the result of the investigation.

Because of the extreme sensitivity of this investigation for the nation's foreign relations and national security, I had to work extremely closely with then Under Secretary of State Philip Habib and other top-level diplomats. At one point, we even needed the assistance of the President and I met with him along with Mr. Civiletti. The help provided by the National Security advisor and by President Carter proved critical.

Associate Deputy Attorney General: 1978-81

In July 1978, as "Koreagate" concluded, Ben Civiletti, by then promoted to Deputy Attorney General, asked me to join him as Associate Deputy Attorney General. Of course, I accepted. Chuck Ruff joined us shortly thereafter as Principal Associate Deputy Attorney General. Our responsibilities included supervision and policy oversight for the

FBI, DEA, the Marshals' Service, the Federal Prisons, the U.S. Attorneys around the country and the Criminal Division in Washington. My own specially assigned areas were terrorism and civil disorders, judicial security and protection, the FBI Charter, and the Cuban-Haitian Immigration Emergency of 1980. In 1980, while Acting Deputy Attorney General, I also worked closely with Counsel to the President, Lloyd Cutler, with regard to the proposed dismissal by the President of a United States Attorney on grounds of alleged corruption. The case presented unusual concerns because it was based in part on the results of polygraph examination which, of course, are inadmissible in a court of law. Ultimately, my recommendation was followed.

Regarding the effort to write a detailed law enforcement charter for the FBI, I put the draft proposal through 33 revisions. Each was subjected to intense review by the FBI and key Congressional staff. Extensive discussions were also carried on with FBI Inspector John Hotis, Deputy Assistant Attorney General Mary Lawton and Judge Webster. Finally, the proposal was introduced in the Senate in late July 1979. In the ensuing months, I testified before the Senate Judiciary Committee on, I believe, 11 occasions in support of the Charter. Although the proposal was never enacted, it served as a model for further internal reform implemented by then Director William Webster as well as for Attorney General Guidelines to regulate FBI activities.

I also helped supervise units responsible for implementing Attorney General Guidelines on Domestic Security Investigations and Undercover Operations. While Acting Deputy Attorney General (December

1979-February 1980), I directly ruled on these matters and also those from the Office of Professional Responsibility (investigations of alleged employee misconduct). My duties also involved specifically authorizing in writing certain sensitive activities related to undercover operations, including Greylord, the undercover probe of corruption in the judiciary in Chicago that has since resulted in numerous prosecutions and convictions of judges, attorneys and other court officials.

As Acting Attorney General, I also substituted for the Attorney General (when he was out of town) at meetings of the National Security Council and its working groups concerning various terrorist hijackings and the Cuban Mariel Boatlift. In some of these meetings in 1979 and 1980, I had to counsel the President's National Security advisor and his Deputy that the Bill of Rights prohibited certain activities they wanted to consider. As a result, these activities were not initiated.

When, in February 1980, Judge Charles B. Renfrew became Deputy Attorney General, he asked me to stay on and continue handling all the same matters and I did. Working with Judge Renfrew was another great learning experience.

From 1978-81, I also served as the policy coordinator of the Government's domestic counter-terrorism program and Vice Chair of the inter-agency Executive Group to Combat Terrorism. I played a similar role regarding security at the refugee camps set up at six U.S. military bases for the Mariel and Haitian boat people. In addition to operational issues, the group I chaired had to carefully assess and protect the legal rights of these illegal immigrants. This challenge became acute when some of them rioted, departed the "camps" and caused serious civil disturbances and widespread crime and vandalism in nearby civilian communities. Because security duties were necessarily divided among various military and federal civilian agencies, I had to function as the judge of the outer limits of the legal authority of each agency. In a related role, I supervised the litigation: (1) on seizure and forfeiture of hundreds of ships and boats illegally used to import illegal immigrants; (2) on incarceration in federal prisons of hundreds of Cubans with prior felony convictions; and (3) on excluding illegal entrants who did not qualify for political asylum.

Also in an interagency role, I helped organize and supervise the Inspector General program which covered contracts, grants, and loans from all the major departments and agencies of the Federal government. These efforts were carried on through the Executive Group to Combat Waste, Fraud and Abuse in Government, chaired by the Deputy Attorney General and overseen substantially by Chuck Ruff and me. The efforts of this group included joint audits, information exchanges, including by computers, and establishment of uniform standards and procedures for fair and effective audits and investigations. Of course, one of the primary issues analyzed was what constituted sufficient grounds and notice to debar government contractors and the related question of their suspension pending completion of legal proceedings. Finally, I was instrumental in helping interview and select each Inspector General, both in 1979 when the new inspector general statute first created the statutory posts of I.G. (beyond HSS which previously had one) and again in 1981 when the new Administration came into office.

During this same time period, I also helped supervise the prosecution of former FBI officials Edward Miller and Mark Felt for illegal break-ins against members of the Weather Underground. I selected as the lead trial counsel John Nields, who had been my counterpart as Chief Counsel in "Koreagate" for the House of Representatives Ethics Committee. The case involved difficult tensions with the FBI and received considerable attention from Mr. Civiletti and from me. Among other legal issues were the treatment in discovery and at trial of highly classified documents and alleged authorization from higher officials.

Many of the other individual cases I worked on during this period are briefly described herein in answer to Question 13.

Counsel and Administrative Assistant to Senator Specter: 1981-87

After three years as Associate Deputy Attorney General, I decided to accept Senator Specter's suggestions that I rejoin him as he began his first term. Since I had already served longer than most Associate Deputy Attorneys General, a change in duties was probably timely and appropriate. Furthermore, from prior partnership with him, I knew Arlen Specter would soon be in the middle of many of the great legal issues of the day, as indeed he later was. Having previously served as a counsel for a Senate Committee, I decided to serve on his personal staff as Counsel, advising him on matters of major concern to him.

For the ensuing six years, I worked closely with him and with Executive officials on a variety of fundamental issues involving governmental power, its fair application, and its limits. These issues included: (1) a Specter amendment that conditioned aid to El Salvador on judicial reform and vigorous investigation and prosecution of the Salvadoran National Guardsmen alleged to have murdered four American churchwomen (which was achieved); (2) Senate Resolutions in 1982, 1983 and 1984 urging an arms control summit that were enacted and helped stimulate the commencement of the START negotiations in Geneva and the subsequent summits; (3) a proposed amendment to the War Powers Act to substantially revise and strengthen the requirement of prior Congressional approval before U.S. Forces may be sent anywhere abroad to engage in combat; (4) enactment of a new statute (The Career Criminal Act of 1984) for greater deterrence for repeat felons and more effective gun control (through mandatory substantial jail terms for illegal possession of firearms by felons with two or more prior convictions); (5) massive analyses, consisting of several hundred pages, of the correct legal interpretation of the 1972 Anti-Ballistic Missile Treaty and its application to testing of space-based systems created in the Strategic Defense Initiative (SDI).

I also participated in staff evaluation and preparation of questions for Judiciary Committee hearings on major judicial nominees including Justice O'Connor.

Ironically, I have read the answers of several nominees to the very same questions of the American Bar Association's Standing Committee on Federal Judiciary, that I myself seek now to answer herein. Moreover, I participated along with others in Senator Specter's review and evaluation of the records and hearing testimony of nominees whose qualifications the ABA committee questioned and whom Senator Specter ultimately voted not to confirm.

Much as might be expected of an attorney trained by and associated for 14 years with Arlen Specter, I am known for extreme thoroughness, fairness, and independence. With an approach marked by painstaking attention to specific facts, faithful adherence to clear precedents and logical application of established doctrine, it should be little surprise that my philosophical, political, and jurisprudential pre-dispositions are considered careful, lawyerlike, balanced, and moderate by virtually all who know my work, wherever on the spectrum their own views may place them.

Regarding specific judicial and legal issues of the day, my work with Senator Specter has involved me in studying such diverse matters as: (1) revision of the insanity defense; (2) adjudication and administration of asbestos cases; prisoner education and job training; civil rights enforcement by Federal agencies; statutory arrangements to assure the independence of the Civil Rights Commission; adequate funding and autonomy for legal aid; and probation and parole standards and revocation procedures.

A major initiative I helped shape would open the Federal Courts to private parties injured by illegal dumping, subsidization or mislabeling of imports. Designed as an alternative to petitioning the International Trade Commission to urge the President to impose, prospectively, countervailing duties, this initiative would make available injunctive relief and damages. By analogy to private antitrust actions, such a "private right of action," it is estimated, would significantly deter illegal conduct and, where deterrence failed, halt it before irreparable injury is inflicted on domestic producers. The proposal's virtue is that it would do so without in any way impeding free and fair trade that does not involve such illegal practices.

This initiative was discussed extensively with Executive officials and with attorneys from the White House, Commerce Department and International Trade Commission (I.T.C.). We studied in detail both the I.T.C. - Commerce case adjudication process and the timeliness and results of its application in specific cases.

Like the proposal for summit negotiations on nuclear arms reductions and the Career Criminal bill, this initiative was developed and pursued over a number of years with the result that we developed considerable understanding of the competing considerations and subtle interplay of forces at work as well as of the available literature.

Finally, when last November, the Iran-Contra affair broke in the press, I assisted Senator Specter in an urgent analysis of the facts uncovered and the applicable civil and criminal statutes. As a result, last December, Senator Specter publicly called for immediate grants of limited use immunity to obtain prompt testimony from Col. North and Admiral Poindexter in order to pursue vigorously and rapidly the issue of prior approval, condonation or subsequent ratification, if any, by their superiors, including the Chief of Staff and the President. Based on our research, their immediate immunized testimony would not jeopardize possible prosecutions if existing evidence against them were sealed and filed with the court and certain subjects were avoided in the interrogation.

Our efforts on the aforementioned ABM interpretation dispute are still in progress. The issue was only temporarily set aside after initial debate last spring on the Senate floor and in joint hearings of the Foreign Relations and Judiciary Committees. The issue is expected to arise again in the coming months. Meanwhile, on the Senator's behalf, I have read and analyzed thousands of pages of cases and documents, including those which comprise the ratification record, the negotiating record and the record of the subsequent practices of the parties. In this connection, I have been working closely with Judge Abraham Sofaer, the State Department Legal Advisor.

The ABM issue is pivotal for the entire future of arms control, nuclear deterrence, and the prospects for a summit to conclude a nuclear arms reduction agreement before the end of the President's term. The issue also has blocked Senate consideration of the Department of Defense Authorization Bill for FY 88-89. The anticipated showdown on this issue on the Senate floor will have significant implications for a new arms agreement and also for the nation's defense programs. For all these reasons as well as its inherent difficulty as a legal issue, I consider the ABM Treaty interpretation dispute the most important of all the issues I have researched and written on anytime in my career. (My memorandum is still in progress, although already longer than 150 pages.

The past six years that I have worked in the Senate have greatly complemented my prior experiences as a prosecutor and Justice Department official. In my 21 years since graduating from law school, I have, at one time or another, had extensive experience personally litigating individual cases in court, investigating complex and disputed fact situations, analyzing constitutional and statutory limitations on the application of Executive powers, exercising Executive legal authority myself, supervising other lawyers doing each of the foregoing, and preparing and analyzing legislation and legislative history.

In their totality, these experiences would seem very solid preparation for the exercise of independent, balanced, fair and informed legal judgment as a member of the Court of Appeals for the Federal Circuit.

ATTACHMENT 5
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Answer: All of my practice since admission to the bar in 1967 has been governmental. Its character has changed several times and has included prosecutions, constitutional law test cases, complex investigations, supervising trial attorneys in particular investigations and prosecutions, advising Justice Department and other government officials on legal and policy matters, making legal decisions myself, and analyzing legal and policy issues for a Senator. My practice can be divided into periods as follows:

From 1967 to 1969, I was in the criminal courts of Philadelphia almost daily, litigating pre-trial motions and post-conviction petitions, trying cases, and briefing and arguing appeals in the Pennsylvania Superior and Supreme Courts. In 1968, I also began supervising the other prosecutors in the Motions Division.

From 1969 to 1972, I litigated a series of constitutional law test cases such as those challenging the Philadelphia bail, prison, and juror selection systems. I also provided advice on constitutional law requirements to police and prosecutors in particular cases and taught classes and prepared educational materials. In 1971-72, I was responsible for the administration of the trial docket as Chief of Adult Prosecution. Meanwhile, I continued to litigate cases in federal as well as state court, but less frequently and usually only special test cases and appeals brought by the Commonwealth.

For the next six years (1972-78), I concentrated on complex grand jury investigations of white collar crime and official corruption, with the Philadelphia Special Investigating Grand Jury from mid-1972 to early 1974, with the Watergate Grand Jury from April 1974 to August 1975, with the Senate Intelligence Committee's investigations, public hearings and reports from August 1975 to April 1976 and with the Koreagate Grand Jury investigations from mid-1976 to mid-1978.

For the ensuing nine years (1978 to the present), I have been primarily involved in an analytic and advisory role as to both legal and policy matters. While in the Justice Department, the issues related primarily to law enforcement, and in the Senate covered virtually all areas of controversial legislative action including international trade disputes, government contracts, foreign aid, industrial modernization, infrastructure renewal, nuclear power safety, synthetic fuels, clean coal burning technology, environmental protection, nuclear weapons, and fraud against the government.

From 1978 to 1981, as Associate Deputy Attorney General (and, briefly, as Acting Deputy Attorney General), I was concerned with civil and criminal enforcement matters in both a decision-making and an advisory role. I also testified on more than a dozen occasions before various Congressional committees on the proposed FBI Charter, the Witness Protection Program, ABSCAM, the use of informants, counter-terrorism and other subjects. Among the areas in which I had a leadership or decisional role were: domestic counterterrorism, the FBI Charter,the impoundment of vessels used in the Mariel boatlift, security at the six immigration camps, security for the Pan American Games (Puerto Rico, 1979) and the Winter Olympics (Lake Placid, New York, 1980) individual hijackings and terrorist incidents, demonstrations and civil disorders, emergency FBI investigations of serial murders and assaults in the Virgin Islands, the forced dismissal by the President of a United States Attorney, and deciding FBI applications to initiate, continue or escalate domestic security investigations, to initiate undercover operations and to use sensitive investigative techniques.

As Counsel and Administrative Assistant to Senator Specter since 1981, I helped research, develop, draft and advocate certain major initiatives involving, inter alia, career criminals and weapons possession, nuclear arms control summits, private right of action to open the federal courts to cases of illegal imports and the correct legal interpretation of the Anti-Ballistic Missile (ABM) Treaty.

Attachment
Page 1 of 1

My courtroom litigation experience all occurred from 1967 to 1974, was over 90% criminal and 90% State Courts of Record, with the balance in Federal Court. I was involved, however, out-of-court, with extensive criminal and civil litigation at the Justice Department from 1976-81, including immigration, property seizure and forfeiture and federal tort liability matters.

I tried approximately 100 criminal cases to verdict, all prior to 1971. In all of them, I was sole counsel for the government. All of these cases were non-jury trials. Traditionally in Philadelphia, this has been the method of trial in the vast majority of cases, even for felony charges (which these were).

In addition, I personally litigated more than 1000 motions and 100 appeals. I also logged scores of days questioning witnesses before grand juries between 1972 and 1978.

Attachment 7
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Answer:

All the matters I personally litigated were during or before 1974 and I no longer have files or information on them beyond what I can recollect. Below is set forth, however, my best recollection of the "substance" and "particular significance" of a few of these matters.

1. In 1968, in Commonwealth v. Stotland, I prosecuted and convicted three test case defendants from a much larger number charged with violating a city ordinance which banned public gatherings during a period of civil disturbance as declared by the Mayor who had to make certain findings about imminent danger to public safety. This ordinance, enacted by the Philadelphia City Council following urban riots that swept across so many cities in the summer of 1967, created a summary offense. The defense was that the ordinance was unconstitutional on its face and as applied in this case and violated the defendants' constitutional rights to assemble, and to peaceably petition.

The trial was written up by Fred Graham in the New York Times because, as I recall, it was one of the very first such prosecutions. Pre- and post-trial motions were heard with numerous witnesses testifying and were denied. Much of the trial testimony was stipulated and the defendants were convicted and fined by Philadelphia Judge Charles L. Guerin, now deceased. On appeal, their convictions and the ordinance were both upheld by the Pennsylvania Superior and Supreme Courts.

Defense of the ordinance was made difficult in part because it banned crowds as small as 10 persons and applied to indoor as well as outdoor venues. One of its saving features, however, was that the period of the emergency was limited to, I believe, 30 days -- although this was extendable on the basis of new findings. Its vulnerabilities were vigorously challenged by Bernard L. Segal, later (and I believe still) a professor at Stanford Law School, on behalf of the American Civil Liberties Union. Among other arguments advanced by the defendants' counsel was that, if constitutionally permissible at all, the banning of crowds would have to be limited to the exact neighborhood that had experienced the civil disturbance on which the declaration was predicated and could not be city-wide as provided in the ordinance.

The decision helped delineate the scope of the government's authority to halt the spread of civil unrest and, where possible, to prevent it altogether. The ordinance, once upheld in this case, became a model, I was informed, for other municipalities.

2. In another case from about the same time, I defended a habeas corpus petition brought by William T. Coleman, Jr. (now of O'Melveny & Myers' Washington office) challenging an indictment for perjury of a civil litigant, D. Arthur Magaziner, who had testified in his own case in a manner which the trial judge in that case considered deliberately false on a material matter of plain fact. On referral from the civil judge, Mr. Magaziner was subsequently indicted by a grand jury.

The matter, which was very vigorously contested with many days of hearings before Judge John McDevitt, had obvious implications for civil litigants and witnesses in civil cases. As I recall, the indictments were upheld, primarily because the testimonial assertion was rather unambiguous and the proof of its falsity clearly crossed the threshold of a prima facie case of perjury. In addition, numerous attacks were made on the procedures followed between testimony and indictment. What I can recall more clearly was what an education it was for a very young lawyer to be litigating against Bill Coleman (who later became a friend).

3. In 1972 and 1973, the Special Investigating Grand Jury probing official corruption was repeatedly challenged in original actions in the Pennsylvania Supreme Court and in the trial court, for various claimed irregularities. These actions sought to invalidate or terminate the Grand Jury, depending on whether it had yet recommended indictment of the particular petitioner. As the Counsel to the Grand Jury, I litigated all these motions and petitions, most of which were brought by outstanding litigators such as Alan J. Davis, a senior partner in Wolf, Block, Shor and Solis-Cohen and later City Solicitor of Philadelphia. All these defenses were successful. The Supreme Court actions were before Chief Justice Nix and the trial court actions were before Philadelphia Common Pleas Judge Harry A. Takiff, Supervising Judge of the Special Investigating Grand Jury.

The significance of these challenges being defeated was that the courts modified a body of prior Pennsylvania appellate authority which as a matter of supervisory powers had created presumptions that such a grand jury was unwarranted except upon continuing proof of extraordinary circumstances establishing extensive, systematic and interrelated corruption and that all other investigative mechanisms were plainly insufficient. Contrary to Federal practice, grand jury investigations beyond specific charges bound over following a preliminary hearing were virtually unknown in Pennsylvania. These decision made it somewhat easier to summon and sustain such Special Investigating Grand Juries, an essential legal instrument for exposing official corruption and other sophisticated financial crime. Like the decision to charge the Jury, the decisions to uphold its work were in most instances made by the supervising judge, Harry A. Takiff.

Koreagate Cases.

4. Tong Sun Park. In 1977, on the basis of a year's intensive investigation before a Federal Grand Jury in Washington, sufficient evidence was uncovered to indict Tong Sun Park for attempted bribery of Congressman Richard Hanna (who subsequently pleaded guilty and served time in federal prison). The pendency of this indictment proved critical in securing the cooperation and testimony of Mr. Park. Through able counsel, William G. Hundley, however, Park, who himself had fled the U.S. for England and later Korea to avoid possible prosecution, sought to prevent his indictment. That he was unsuccessful in his efforts to exclude documents and diaries seized from his home and office under IRS and grand jury authority set the stage for later exposing that the payments claimed to have been made had never reached the scores of Congressmen whose names appeared on various lists.

Clearly, the key to breaking open "Koreagate" was obtaining Tong Sun Park's indictment. This was difficult because essentially there were no witnesses. However, we reconstructed from his bank records and similar third party documents a series of payments to Congressmen.

A conspiracy-bribery case was established by June 1977. In addition, we had already established a case under tax statutes for seizing his assets and records in this country. Although his possible extradition from Korea was attended by many difficulties, Park's desire someday to resume business operations in the U.S., along with encouragement from the Korean Government, ultimately led him to conclude that he should cooperate and become a witness for the United States Government, as he then did.

There was extraordinary pressure to indict Park immediately, starting in October 1976, the peak of the Presidential and Congressional campaigns. We followed the proper course of building a proper case first. In addition to pressure from the Washington Post which printed numerous articles assuming the guilt not only of Park but also the Congressmen named on the lists, I was called on to justify both to superiors in the Justice Department and to individual House and Senate members, on the one hand, why Congressman X was not indicted yet, and, on the other hand, why Congressman Y was being investigated at all.

Aside from external pressures, the greatest challenge in these cases was making correct judgments as to sufficiency of evidence and availability and appeal of possible defenses. This role I was to play many times as Associate Deputy Attorney General.

5. Otto Passman. Once we secured Park's information in the form of about 20 days of deposition testimony, my team of prosecutors built a case against former Congressman Otto Passman who was then indicted. By that time, Passman had been defeated in a primary, and as time

passed he became increasingly impaired due to old age. Extensive litigation ensued, under my supervision, over whether he was too old and ill to stand trial. Washington attorney James Hamilton vigorously litigated a series of motions to delay or altogether avoid trial, but the Government prevailed. Ultimately, the case, which charged both criminal tax and Title 18 violations, was removed to Louisiana for trial. Mr. Passman died before trial commenced.

6. Han Cho Kim. Another Korean-American businessman, Han Cho Kim, was also indicted in a separate part of the Koreagate investigation. Again, members of the team of lawyers I directed prepared this case for trial. Kim was convicted before a jury in Washington, D.C. federal district court. Mr. Kim was represented by Washington attorney Bill Geoghegan.

None of these Koreagate convictions was disturbed on appeal.

As indicated above in response to Question 9, the most gratifying and significant result was the enormous deterrence apparently achieved by these prosecutions and the efforts of the on-going Grand Jury. Namely, Korea and certain other nations, according to sensitive intelligence, abruptly terminated programs intended to buy influence with vulnerable members of the Congress. That our investigation and indictment of Park and the deposition testimony we obtained in Seoul ultimately provided the driving force for Congressional Ethics Committee investigations and public hearings only magnified this deterrent effect.

Initially, there was some concern over the potential for unintended interference with potential criminal prosecutions from the

Congressional investigations; in the end, however, full cooperation was achieved. Once the Grand Jury had progressed sufficiently, the potential for jeopardizing possible prosecutions diminished. Mr. Civiletti and I were able to negotiate carefully-crafted arrangements for sharing witnesses, subpeonaed documents and other evidence and information. These arrangements were negotiated with Victor Kramer for the Senate Ethics Committee and with Leon Jaworski, Phil Lacovara, and John Nields for the House of Representatives Ethics Committee. The arrangements became something of a model for Justice Department-Congressional cooperation on investigations and have been a point of reference for such parallel probes from 1978 to the Iran-Contra Investigation (ironically, in part under Mr. Nields' direction).

7. Felt-Miller. Subsequent to the Koreagate prosecutions, individual prosecutions I participated in supervising as Associate Deputy Attorney General included the prosecution (and conviction) of former FBI Assistant Directors Mark Felt and Edward Miller (which involved extremely complex and delicate issues of "graymail" because of the importance to the prosecution of highly classified documents, many of which simply could not be declassified and made public at trial). The issues presented included the lawfulness of extensively redacting classified documents, the application of the doctrine of acting pursuant to order from higher authority and many others. A particularly difficult decision was whether to continue the prosecution brought against former Acting FBI Director L. Patrick Gray. Ultimately, it was decided to sever the case against him and it was later dismissed by the Government.

8. In addition, I participated in evaluating: (1) the (separate) investigations of White House officials Bert Lance, Hamilton Jordan and Tim Kraft, and of Billy Carter; (2) review of whether allegations warranted application to the court for appointment of a special prosecutor and also preparation of pleadings for filing with the Special Court, with respect to various other high government officials I am not permitted by that law to identify; (3) litigation in the Southern District of Florida concerning civil seizure and forfeiture actions under the Customs law for boats used illegally to transport illegal aliens from Cuba and Haiti to Florida (which, at the direction of the Attorney General, I supervised directly as part of my Mariel boatlift responsibilities; the concern was that any setback in the cases would result in the release and reuse of the boats and ships); (4) individual immigration actions before Administrative law judges and various class actions in the District Court for the Northern District of Georgia concerning incarceration in the federal prison in Atlanta of illegal immigrants with felony conviction in Cuba, and in the Southern District of Florida and elsewhere to detain and exclude illegal Haitian entrants; (5) several of the ABSCAM cases and unrelated cases proposed to be brought against members of Congress were reviewed by the Deputy Attorney General and his Associates. (I also later testified before a House Judiciary subcommittee on the use of informants and the method for determining who had become a "target" of the ABSCAM investigation.)

As in the Koreagate cases, I participated substantially in the legal analysis and strategy development and supervision, but did not "personally litigate" those cases in front of district court judges. The essential issues concerned the sufficiency of the evidence and the availability of defenses.

9. Similarly, for the past six years in the United States Senate, I have not "personally litigated" any matters in court. I have, however, drafted, edited or reviewed potential pleadings in complex matters, including, for example, a possible friendly lawsuit to clarify the constitutionality of the War Powers Act. Although discussed extensively with the President's Counsel and Justice Department officials, in the final analysis it was mutually decided that the Senator would not file such a lawsuit for a declaratory judgment.

Another more recent example was the preparation of a complaint against the Environmental Protection Agency to compel expeditious cleanup of PCB toxins at the Paoli, Pennsylvania railroad yards. The action has not been filed because EPA accelerated its activity sufficiently to meet emergency requirements and to expedite the full study that precedes full cleanup.

10. Of course, most of my drafting and writing during this period has been of bills, amendments to bills and reports or portions thereof to accompany bills, or analyses of statutes already enacted. The subject matter of such writings has been diverse and has included:

(1) the ABM Treaty interpretation dispute;

(2) enactment of Senator Specter's Terrorist Prosecution Act (giving the U.S. world-wide jurisdiction to prosecute terrorists who murder or assault American citizens);

(3) the legality under international and domestic law of abducting such terrorists (where extradition is unavailable) for trial in the U.S.;

(4) enactment of Senator Specter's Career Criminal Act (discussed more fully in the answer to Question 9;

Studying the issues related to these matters has involved close legal analysis of statutory and constitutional authorities. In keeping with the rapid pace of Senate hearings and floor activity, however, most of my conclusions and reasons were conveyed orally to Senator Specter and others.

Conclusion

Whether direct or indirect, personal or supervisory, I believe the totality of my litigation experience far exceeds that of many sitting Federal appellate judges. More importantly, I believe that I have ample experience which, though different in form, is essentially equivalent in effect to that of litigators in private practice who have been found qualified by the ABA Committee.

Below are set forth the names, addresses and phone numbers of counsel for the "other parties" in some of the cases described above.

William G. Hundley	During the Koreagate Investigation,
Hundley & Cacheris	he represented Tong Sun Park.
1914 Sunderland P., N.W.	
Washington, D.C.	
202/293-0224	
William T. Coleman, Jr.	Represented D. Arthur Magaziner
O'Melveny & Myers	in Philadelphia.
1800 M Street, N.W.	
Washington, D.C.	
202/457-5300	
Mitchell Rogovin	Represented the CIA before the
Rogovin, Huge and Lenzner	Senate Select Committee on
	Intelligence in 1975 and 1976.
1730 Rhode Island Ave., N.W.	
Washington, D.C.	
202/466-6464	

James Sharp Sharp, Green & Lankford Suite 500 1800 Massachusetts Ave., N.W. Washington, D.C. 202/629-2400	Represented Charles Rebozo during the Watergate investigation in 1974-75.
John Nields, Jr. House of Representatives Iran-Contra Counsel H-419, U.S. Capitol Washington, D.C. 202/225-7902	Represented the House of Representatives Ethics Committee in Koreagate, 1977-78.

Attachment 8

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]

Page 1

Reporting Status *(Check Appropriate Box)*

☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

Agency Use Only

OGE Use Only

Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)*

Termination Date *(If Applicable)* *(Month, Day, Year)*

Reporting Individual's Name
Last Name: Michel
First Name and Middle Initial: Paul R.

Position for Which Filing
Title of Position: Circuit Judge
Department or Agency *(If Applicable)*: n/a

Location of Present Office
Address *(Number, Street, City, State and ZIP Code)*: 303 Hart Senate Building Washington, DC. 20510
Telephone No. *(Include Area Code)*: (202) 224-9006

Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*
Title of Position(s) and Date(s) Held: Counsel and Administrative Assistant, Senator Specter

Presidential Nominees Subject to Senate Confirmation
Name of Congressional Committee Considering Nomination: Sen. Judiciary Committee
Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.
Signature of Reporting Individual: Paul R. Michel
Date *(Month, Day, Year)*: 12/22/87

Other Review **(If desired by agency)**
Signature of Other Reviewer
Date *(Month, Day, Year)*

Agency Ethics Official's Opinion
The information contained in this report discloses no conflict of interest under applicable laws and regulations.
Signature of Designated Agency Ethics Official/Reviewing Official
Date *(Month, Day, Year)*

Office of Government Ethics Use Only
Signature
Date *(Month, Day, Year)*

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

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SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name				
Paul R. Michel	Assets and Income	Page Number	1	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

▼

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Example:	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	~~McLean Bank Savings account~~	~~X~~									~~X~~						~~X~~										
2	IRA T. Rowe Price		X						X								X										
3																											
4																											
5																											
6																											
7																											
8																											
9																											
10																											

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SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

X

Form Approved
OMB No. [illegible]

Reporting Individual's Name
Paul R. Michel

Page Number	1	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

S or DC	Identification of Assets	Type of Transaction (X): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (X): $1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
Example:	XYZ Common	X			2/1/83			X			
1	not applicable										
2											
3											
4											
5											
6											

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☐

S	Source (Name and Address)	Brief Description	Value
Example:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
	Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1	not	applicable	
2			
3			
4			
5			
6			

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Form Approved
OMB No. [illegible]

Reporting Individual's Name
Paul R. Michel

Page Number	1	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts:

NONE ☒

		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC	Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1978	10%	on demand	X				
1											
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/76 ptnership agmnt.

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Reporting Individual's Name
Paul R. Michel

Page Number	/	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution.

Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☒

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

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278-108

FINANCIAL STATEMENT

Attachment 9

Dec 1987
Paul R. Michel

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	
Cash on hand and in banks	3 000.00[1]
U.S. Government securities—add schedule	0
Listed securities—add schedule	4 000.00[2]
Unlisted securities—add schedule	0
Accounts and notes receivable:	
Due from relatives and friends	0
Due from others	0
Doubtful	0
Real estate owned—add schedule	0
Real estate mortgages receivable	0
Autos and other personal property	8 000.00[3]
Cash value—life insurance	0
Other assets—itemize:	
Senate Pension	31 000.00
Justice Dept. Pension	18 000.00
Total assets	64 000.00

LIABILITIES	
Notes payable to banks—secured	0
Notes payable to banks—unsecured	6 000[4]
Notes payable to relatives	20 000.00
Notes payable to others	0
Accounts and bills due	2 000.00[5]
Unpaid income tax	0
Other unpaid tax and interest	4 000.00[6]
Real estate mortgages payable—add schedule	0
Chattel mortgages and other liens payable	0
Other debts—itemize:	
Car Loan Chrysler Credit	10 600.00
Total liabilities	42 500.00
Net worth	21 500.00
Total liabilities and net worth	64 000.00

CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	0
On leases or contracts	0
Legal Claims	0
Provision for Federal Income Tax	0
Other special debt	0

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	no
Are you defendant in any suits or legal actions?	no
Have you ever taken bankruptcy?	no

[1] Checking account 15350301-06: $1,600
Savings Account 15350301-24: $1,400
McLean Bank, McLean, Virginia

[2] T. Rowe Price (IRA) Growth Stock Fund Account No. 400191693-7

[3] $5,000 equity in new car (down payment) plus clothes and furniture.

[4] McLean Bank Tuition Loan, 12/14/87, three years at 13%.

[5] Approximate breakdown: $1,000 VISA
$1,000 misc. bills such as Bloomingsdale's, utilities, etc. (none overdue)

[6] On above $20,000 note.

ABA
AMERICAN BAR ASSOCIATION **Standing Committee on Federal Judiciary**
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
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30 Rockefeller Plaza
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125 Broad Street
New York, NY 10004
THIRD CIRCUIT
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Philadelphia, PA 19103
FOURTH CIRCUIT
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101 St. Paul's Boulevard
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52 East Gay Street
Columbus, OH 43215
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Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

December 22, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: PAUL R. MICHEL
United States Court of Appeals
for the Federal Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Paul Michel for appointment as Judge of the United States Court of Appeals for the Federal Circuit.

A substantial majority of our Committee is of the opinion that Paul Michel is "Qualified" for this appointment. The minority found him to be Well Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

THE FEDERAL CIRCUIT BAR ASSOCIATION

OFFICERS

JACK C. GOLDSTEIN
PRESIDENT
ARNOLD, WHITE & DURKEE
P.O. BOX 4433
HOUSTON, TEXAS 77210
(713) 787-1010

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CIVIL DIVISION
DEPARTMENT OF JUSTICE
550 11TH STREET, N.W.
WASHINGTON, D.C. 20530
(202) 724-7681

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TREASURER
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MERIT SYSTEMS PROTECTION BOARD
1120 VERMONT AVENUE, N.W.
WASHINGTON, D.C. 20419
(202) 653-6842

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800 SEVENTEENTH ST., N.W.
WASHINGTON, D.C. 20006
(202) 862-1800

MARVIN J. GARBIS
MELNICOVE, KAUFMAN, WEINER, SMOUSE & GARBIS
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
(301) 332-8566

CLARENCE T. KIPPS, JR.
MILLER & CHEVALIER, CHARTERED
655 - 15TH STREET, N.W.
WASHINGTON, D.C. 20005
(202) 626-5800

STEVEN C. LAMBERT
HAMEL & PARK
888 - 16TH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 835-8052

J. GARY McDAVID
McDERMOTT, WILL AND EMERY
1850 K STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20006
(202) 778-8027

S. RICHARD SHOSTAK
STEIN, SHOSTAK, SHOSTAK AND O'HARA
3580 WILSHIRE BOULEVARD
SUITE 1240
LOS ANGELES, CALIFORNIA 90010
(213) 384-2850

ANDREW P. VANCE
BARNES, RICHARDSON & COLBURN
475 PARK AVENUE SOUTH
NEW YORK, NEW YORK 10016
(212) 725-0200

ROBERT D. WALLICK
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 429-3000

EXECUTIVE DIRECTOR

GEORGE E. HUTCHINSON
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
1775 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 293-6850

EX OFFICIO

THE HONORABLE FRANCIS X. GINDHART
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439
(202) 633-6550

February 23, 1988

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Biden:

The Federal Circuit Bar Association is a national bar association consisting of over 1,400 members. One of our primary responsibilities is to assure that highly qualified persons are appointed to the Court of Appeals for the Federal Circuit.

We have carefully examined the qualifications of Paul R. Michel and found him to be qualified for appointment to the Court of Appeals for the Federal Circuit. He possesses the high ability, integrity, and judicial capacity required for this important Court.

If we can be of any assistance to the Committee, please let us know.

Sincerely,

Jack C. Goldstein
President

cc: The Honorable Edwin Meese, III
The Honorable Stephen J. Markman
The Honorable A. B. Culvahouse, Jr.

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION
475 PARK AVENUE SOUTH
NEW YORK, N.Y. 10016
(212) 725-0200

DAVID O. ELLIOTT
PRESIDENT

December 30, 1987

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
Washington, D,C, 20510

Re: PAUL R. MICHEL
United States Court of Appeals
for the Federal Circuit

Dear Senator Biden:

The purpose of this letter is to inform you of the opinion of the Board of Directors of the Customs and International Trade Bar Association pertaining to the nomination of Paul Michel for appointment as Judge of the United States Court of Appeals for the Federal Circuit.

Our Board of Directors is unanimously of the opinion that Mr. Michel is "Qualified" for this appointment. We have received and reviewed Mr. Michel's responses to our questionnaire and to that of the American Bar Association. Members of our Judicial Selection Committee interviewed him on November 10, 1987. Also, our Judicial Selection Committee interviewed a number of lawyers who have known Mr. Michel professionally.

Based on the aforementioned questionnaire responses (including writing samples) and interviews, we are satisfied that Mr. Michel possesses the competence, integrity, and temperament to be a judge on the Court of Appeals for the Federal Circuit. Mr. Michel has a pleasant demeanor and impressed us as intellegent, objective, and eager to perform challenging work. The lawyers whom we contacted were all of the view that he is well suited to serve as a federal judge and were uniformly generous in their praise of Mr. Michel's character, thoroughness, diligence, and fairness. It is particularly noteworthy that the lawyers interviewed are highly respected within our profession and included, among others, two former Attorneys General of the United States, a Counsel to the President, and Senator Specter.

Sincerely,

DOE/kd

PLEASE REPLY TO:

ITC-41

REPORT BY THE INTERNATIONAL TRADE COMMISSION TRIAL LAWYERS ASSOCIATION TO THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY RELATIVE TO THE NOMINATION OF PAUL R. MICHEL TO THE UNITED STATES COURT OF APPEAL FOR THE FEDERAL CIRCUIT

FEBRUARY 16, 1988

The International Trade Commission Trial Lawyers Association

The ITC Trial Lawyers Association is a non-profit association of attorneys who practice or are otherwise interested in Section 337 cases before the U.S. International Trade Commission. Founded in April 1984, the Association functions under an established constitution and bylaws, publishes a monthly newsletter and maintains an active committee system. There are currently over 350 members in the Association. Additional information on the Association is provided in the attachment to the present report.

Paul R. Michel

During the brief time period between learning of Mr. Michel's nomination and the hearing date before this Committee, the Judicial Selection Committee of the ITC Trial Lawyers Association has conducted, as can be seen in more detail below, as thorough an investigation as possible, including a personal interview with Mr. Michel, telephone interviews with his past and present colleagues, and with opposing counsel from cases in which he was involved. As a result of these interviews and from an in-depth review of Mr. Michel's responses to the questionnaires of the American Bar Association and the Customs and International Trade Bar Association, it is the view of the ITC Trial Lawyers Association that Mr. Michel, albeit lacking a technical background, is eminently qualified for the vacancy at the Court of Appeals for the Federal Circuit to which he has been nominated.

Mr. Michel was contacted in early January 1988 by Steven E. Lipman, Chairman of the Judicial Selection Committee, and agreed to provide the Committee with copies of his responses to the questionnaires of the American Bar Association and the Customs and International Trade Bar Association. Copies of these papers, together with a brief background summary, were sent by Mr. Lipman to the other four members of the Committee (Robert S. Swecker, Brian G. Brunsvold, Thomas V. Heyman and Francis Paintin) so that interviews could be arranged by these members with specific persons perceived from the materials provided by Mr. Michel to be in a position to give information as to the appropriateness of Mr. Michel's possible appointment to the Federal Circuit. Mr. Paintin and Mr. Heyman were requested to contact past or present colleagues of Mr. Michel; Mr. Swecker and Mr. Brunsvold were requested to contact opposing counsel from cases in which Mr. Michel had been involved. In addition, a personal interview with Mr. Michel took place on January 21, 1988 among the entire Committee.

Following the personal interview, one of the members of the Committee, while expressing the desire to see technically qualified persons appointed to the Federal Circuit, stated that "Mr. Michel...has a background of dealing with complex fact situations, and the energy and intellect to understand and deal effectively with such complex situations." Equally positive statements were made by the other members of the Committee.

Senator Arlen Specter, to whom Mr. Michel is presently Counsel and Administrative Assistant, had nothing but the highest praise for Mr. Michel and generally endorsed his nomination. Similarly, former colleagues at the Department of Justice reiterated the views of Senator Specter and stressed that Mr. Michel possesses the qualities which are essential to becoming a good judge. During its interview with Mr. Michel, the Committee noted his ability to listen to his interlocutors and weigh the facts presented; this important character trait was also mentioned by one of Mr. Michel's former colleagues (who has served on the bench) to show that Mr. Michel has a "judicial disposition". It was noted further by this former colleague that Mr. Michel is "extremely hardworking and a real self starter", and that Mr. Michel's lack of background in the field of intellectual property law would not impair his ability to handle such cases. The colleague concluded that Mr. Michel would not be unduly deferential to the opinions of others on the Court who have more experience in the intellectual property field.

A telephone interview conducted with an attorney who had opposed Mr. Michel in a habeas corpus petition yielded still more laudatory comments as to his suitability for the present vacancy and as to his ability as a litigating attorney.

In light of the above, the International Trade Commission Trial Lawyers Association fully endorses the candidacy of Mr. Paul R. Michel to the Court of Appeals for the Federal Circuit.

Respectfully submitted,

Steven E. Lipman

Steven E. Lipman
Chairman, Judicial Selection Committee
ITC Trial Lawyers Association

ITC TRIAL LAWYERS ASSOCIATION
2000 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-0635

ROBERT S. SWECKER
PRESIDENT

THOMAS J. MACPEAK
PRESIDENT-ELECT

F. DAVID FOSTER
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ROBERT D. LITOWITZ
JANE C. LUXTON
FRANCIS A. PAINTIN
(Term expires - 1987)

DONALD K. DUVALL
THOMAS V. HEYMAN
STEPHEN L. SULZER
ALLEN S. MELSER
STEVEN H. NOLL
(Term expires - 1988)

INTERNATIONAL TRADE COMMISSION TRIAL LAWYERS ASSOCIATION

Purpose Of The Association. The concept of the Association arose as a result of the rapid growth in the number of investigations under Section 337 and the consequent need for better communication and dissemination of information regarding this important area of practice. Moreover, as the workload under Section 337 increased, pressures also grew on the office of the administrative law judges, the Commission and the Court of Appeals for the Federal Circuit, who were administering the statute. It was believed that by forming an association, not only would communication within the active bar improve, but also among the bar, the business community and those organs of Government which have an interest in the operation of Section 337.

The Association's activities are built around its committee system, which includes the following committees:

ITC - Bar Liaison
Newsletter
Legislation
Regulations
Program
Membership
Professional Responsibility
House Counsel
Foreign Members
Amicus
Judicial Selection

Membership. To be eligible for Active membership in this Association, a person must be a member in good standing of the bar of any State of the United States or of the District of Columbia, and have an interest in practice before the United States International Trade Commission. To be eligible for Associate membership, a person must be authorized to practice before a foreign court or agency exercising authority in areas of interest to the United States International Trade Commission, or otherwise have an interest in practice before the Commission.

Membership dues are paid annually and are $30 for non-Government attorneys and $15 for U.S. Government attorneys.

Judicial Selection Committee. With the above background in mind, the Judicial Selection Committee was formed by the Executive Committee of the Association in an effort to ensure that the nominees to both the Federal Circuit and the International Trade Commission be persons familiar with the particular concerns of the legal community with respect to the enforcement of Section 337, as well as, if possible, persons having the necessary technical background for thorough comprehension of the many complex intellectual property-related matters brought before both forums -- principally patent-related matters.

February 1988

MALCOLM J. HOWARD

Birth:	June 24, 1939	Kinston, North Carolina
Legal Residence:	North Carolina	
Marital Status:	Married	Eloise McGinty Howard 2 children
Education:	1957 - 1958	The Citadel
	1958	Columbia Preparatory School
	1958 - 1962	U. S. Military Academy West Point B.S. degree
	1967 - 1970	Wake Forest University School or Law J.D. degree
Bar:	1970	North Carolina
Military Service:	1958 - 1962	West Point
	1962 - 1972	United States Army
Experience:	1972	Dixon Marketing, Inc. General Counsel and Marketing Manager
	1973 - 1974	Assistant U. S Attorney Eastern District of North Carolina
	1974	Executive Office of the President The White House Staff Assistant to the President
	1974 - 1975	Sole practitioner Greenville, No. Carolina
	1975	Howard and Vincent Partner
	1975 - 1980	Howard, Vincent & Duffus Partner
	1980 - 1981	Howard, Browning & Sams Partner
	1981 - 1986	Howard, Browning, Sams & Poole Partner
	1986	Howard, Sams, Poole & Hill Partner
	1986 - present	Howard, Browning, Sams, Poole, Hill & Daniel Partner

Office:
200 East Fourth Street
(P.O. box 859)
Greenville, North Carolina.27834
919 758-1403

Home:
212 Chowan Road
Greenville, North Carolina 27834
919 756-4870

To be U. S. District Judge for the Eastern District of North Carolina

QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name.**

Malcolm Jones Howard.

2. **Address.**

Home - 212 Chowan Road
Greenville, NC 27834

Office - Howard, Browning, Sams, Poole, Hill & Daniel
200 East Fourth Street
P. O. Box 859
Greenville, NC 27835-0859

3. **Date and place of birth.**

June 24, 1939, Kinston, North Carolina (Lenoir County).

4. **Marital status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to Eloise Kathleen McGinty on November 21, 1964.
Spouse occupation: Homemaker

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

School	Dates	Degrees Received	Dates of Degrees
The Citadel Charleston, S.C.	Aug., 1957- Feb., 1958	None	N/A
Columbia Preparatory School Washington, D.C.	Feb., 1958- Apr., 1958	None	N/A
U. S. Military Academy Westpoint, N.Y.	July, 1958- June, 1962	Bachelor of Science	June 6, 1962
Wake Forest University School of Law Winston Salem, N.C.	Aug. 1967- June, 1970	Juris Doctor	June 8, 1970

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

Dates	Firm or Entity	Position
June, 1962 - Feb., 1972	U. S. Army	Officer
Feb., 1972 - May, 1972	Blount & Crisp, Attorneys Greenville, NC 27834	Associate
May, 1972 - Dec., 1972	Dixon Manufacturing, Inc. P. O. Box 1618 Kinston, NC 28501	General Counsel
Jan., 1973 - Feb., 1974	U. S. Attorney's Office Eastern District of N.C. P. O. Box 26897 Raleigh, NC 27611	Assistant U.S. Attorney
Feb., 1974 - Sept., 1974	Executive Office of the President The White House Washington, D.C.	Staff Assistant to the President (Deputy Special Counsel for Watergate proceeding)
Sept., 1974 - Present	M. J. Howard "sole practitioner" Howard, Vincent & Duffus Howard, Browning & Sams Howard, Browning, Sams & Poole Howard, Browning, Sams, Poole, Hill & Daniel	Practicing attorney and law firm partner

The following are "part time" activities or business interests.

Dates	Firm or Entity	Position/Relationship
1976 - Present	Standing Chapter 13 (Bankruptcy) Trustee; Court appointed for the Eastern District of North Carolina	Trustee
1980 - Present	H&B Associates, a partnership owning rental real estate	50% partner with Mr. Robert Browning, Greenville, N.C.

1981 - Present	P&H Enterprises, a partnership owning rental real estate	50% partner with Mr. Jerry Powell, Greenville, N.C.
1980 - Present	50-acre farm in Lenoir County, N.C.	50% ownership with brother, C. Dwight Howard
1983 - Present	USAA Income Properties, a real estate limited partnership; Partnership Identification No. 74-2271057	5 units
1984 - Present	Galveston Associates, a real estate limited partnership; Partnership Identification No. 25-1477299	1 unit

7. **Military Service. Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

Cadet - U. S. Military Academy, West Point, New York, July 2, 1958-June 6, 1962, Cadet Serial Number 18330.
Commissioned 2nd Lt., U. S. Army, June 6, 1962
Infantry Branch
Active Military Service - June 6, 1962-February 2, 1972.
Exit rank from Active Duty - Major
Duty stations - Ft. Benning, Georgia
Schofield Barracks, Hawaii
Viet Nam (two tours)
Ft. Belvoir, Virginia
Ft. Bragg, North Carolina
The Judge Advocate General's School, Charlottesville, Virginia
The Pentagon, Washington, D. C.
Reserve Service - February 3, 1972-June 6, 1982 - Honorable Discharge.
Retired Rank - LTC, 1982 - no entitlements.
Present Affiliation with Military - Appointed Civilian Aide to the Secretary of the Army for North Carolina on May 5, 1986 for a two-year term.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

1957-58 - Part athletic (basketball) scholarship at The Citadel, Charleston, South Carolina.

1957-58 - Several Farm Youth (4-H Club) scholarships (estimated total value $1,000.00) - used at The Citadel, Charleston, South Carolina.

Military Awards and Commendations:
- Silver Star
- Bronze Star with "V" and oak leaf cluster
- Purple Heart
- Meritorious Service Medal
- Air Medal with oak leaf cluster
- Paratrooper Badge
- Ranger
- Combat Infantryman's Badge

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.**

Wake Forest University School of Law Student Bar Association	1967-1970	President 1969-1970
North Carolina Bar Association	1970-Present	Director - Bankruptcy Section
American Bar Association	1970-Present	
Inter-American Bar Association	1981-1984	
National Association of Chapter 13 Trustees	1976-Present	National President 1982-1983, Legislative Counsel 1981-Present
National Association of Bankruptcy Trustees	1984-1985	
Federal Bar Association	1971-1974	
Phi Alpha Delta Legal Fraternity	1967-Present	

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Active in Lobbying:
- North Carolina Bar Association
- Association of the U. S. Army
- American Bar Association

Other organizations:
- Rotary Club of Greenville
- Pitt-Greenville Chamber of Commerce
- East Carolina Vocational Center
- Kennedy Children's Home (Board of Visitors)
- The Memorial Baptist Church, Deacon and Sunday School Teacher
- North Carolina Baptist Foundation

Veterans of Foreign Wars, Post 7032
Disabled American Veterans, Chapter 037, Vice Commander
American Legion
American Arbitration Association, Arbitrator
Civilian Aide to the Secretary of the Army for North Carolina
Greenville Golf and Country Club
Greenville Museum of Art
U. S. Military Academy Athletic Association
East Carolina University Pirate Club

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

North Carolina Supreme Court
Admitted August 14, 1970.

United States District Court for the Eastern District of North Carolina
Admitted September 3, 1974.

United States Court of Appeals for the Fourth Circuit
Admitted July 26, 1973.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Writings:
Derivative Actions - The Nuts and Bolts of Suit, Published in North Carolina Business Practice Handbook, Revised Edition, 1985, by Wake Forest University School of Law.

Speeches on Constitutional Law or Legal Policy:
None.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Excellent. Last physical examination in July, 1987.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3)**

significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

I have not served as a judge.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

I filed as a candidate for election to the U. S. House of Representatives for the First Congressional District of North Carolina in February of 1972. I was defeated in the primary.

I was commissioned an officer in the U. S. Army on June 2, 1962 and served on active duty (10 years) and reserve duty (10 years) and was honorably discharged in 1982.

I was appointed Assistant U. S. Attorney for the Eastern District of North Carolina in January, 1973, and served in that capacity until February, 1974.

I was appointed Staff Assistant to the President in March, 1974, and served in that position until September, 1974.

I was appointed Standing Chapter 13 Trustee (Bankruptcy) for the Eastern District of North Carolina in October of 1976 and have continually held that position since that date.

I was appointed Civilian Aide to the Secretary of the Army for North Carolina on May 9, 1986 for a two-year term.

17. **Legal Career:**

    a. **Describe chronologically your law practice and experience after graduation from law school including:**

        1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

            I have never served as a clerk to a Judge.

        2. **whether you practiced alone, and if so, the addresses and dates;**

            I commenced my law practice as a "sole practitioner" in September, 1974, with offices located at 111 E. Third Street, Greenville, North Carolina, under the name Malcolm J. Howard, Attorney at Law. I continued as a sole practitioner until approximately June, 1975, when Charles M. Vincent joined me in practice and we established a partnership under the name of Howard and Vincent.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Affiliation	Dates	Activity or Job
The Judge Advocate General Corps, U.S. Army, Charlottesville, VA.	August, 1970 - May, 1971	School Secretary of the Judge Advocate General School with additional duties of teaching the "basic" class.
Office of Legislative Liaison, U.S. Army, The Pentagon Washington, D.C.	May, 1971 - February, 1972	Legislative Counsel to the Secretary of the Army
Dixon Marketing, Inc., International Marketing Company, Kinston, N.C.	May, 1972 - December, 1972	General Counsel and Marketing Manager
Office of United States Attorney, Eastern District of North Carolina, Raleigh, N.C.	January, 1973 - February, 1974	Criminal Prosecutor and civil assignments
Executive Office of The President, The White House, Washington, D.C.	February, 1974 - September, 1974	Staff Assistant to The President (Deputy Special Counsel for Watergate proceeding)
Malcolm J. Howard Attorney at Law, 111 E. Third Street, Greenville, N.C.	September, 1974 - June, 1975	General Law Practice (sole practitioner)
Howard and Vincent 111 E. Third Street, Greenville, N.C.	June, 1975 - September, 1975	General Law Practice (partner)
Howard, Vincent & Duffus 200 East Fourth Street, Greenville, N.C.	September, 1975 - May, 1980	General Law Practice (partner)
Howard, Browning & Sams 200 East Fourth Street, Greenville, N.C.	May, 1980 - August, 1981	General Law Practice (partner)
Howard, Browning, Sams & Poole 200 East Fourth Street, Greenville, N.C.	August, 1981 - September, 1986	General Law Practice (partner)

Howard, Sams, Poole & Hill 200 East Fourth Street, Greenville, N.C.	September, 1986 - December, 1986	General Law Practice (partner)
Howard, Browning, Sams, Poole, Hill & Daniel 200 East Fourth Street Greenville, N.C.	December, 1986 - Present	General Law Practice (partner)

b.1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

August, 1970- September, 1974 -	In the specific jobs and positions as set out in response to question 17(a)(3).
September, 1974- Present -	I have maintained a "general practice" since September, 1974. This has involved civil and criminal litigation, real estate, wills and estates, corporate work and bankruptcy practice. During the past five years, I have principally limited my trial practice to Federal proceedings.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Bill Clark Construction Co., Inc. - I have served as general counsel for this development company since its organization in 1979. This is a $20 million company specializing in residential and commercial building and development in eastern North Carolina. Mr. Bill Clark is owner and President. Mr. Clark's telephone number is (919) 355-2000.

First State Bank (now First Citizens Bank) - I have served as attorney for this local bank for approximately 10 years. In 1985, this bank merged with First Citizens Bank (I handled the merger for First State), and we continue to do the local work as directed by President Don Langston. We represent the bank in such areas as collections, defense litigation, contracts, and personnel matters. Mr. Langston's telephone number is (919) 756-2427.

Anheuser-Busch - I have been local counsel for this company's division known as Eagle Snacks located in Robersonville, North Carolina. This work involves general representation, contracts, real estate and land disputes. Mr. Frank Hruby, of St. Louis, Missouri, is the senior house attorney with whom I have professional contact. Mr. Hruby's telephone number is (314) 577-3203.

Eastern Carolina Vocational Center - This is a regional employment center for the handicapped for which I serve as general counsel. This legal work includes government contracts, real estate, personnel matters and litigation. Mr. Dan LeRoux is the Executive Director of Eastern Carolina Vocational Center. Mr. LeRoux's telephone number is (919) 758-4188.

Wilkerson Funeral Home - I serve as general counsel for this large eastern North Carolina mortuary establishment. This involves contracts, real estate, litigation, collection and estate matters. Mr. Don Wilkerson is the principal officer with whom I have contact. Mr. Wilkerson's telephone number is (919) 752-2101.

Farmers - In the past 8 years, I have represented more than 150 eastern North Carolina farmers in farm debt-related matters. Perhaps my most renowned farm client is Mr. Gaylord Perry, retired baseball player and farmer. I have represented Mr. Perry for approximately 3 years. Mr. Perry's telephone number is (803) 489-7151.

c.1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.

I have appeared in Court on a regular basis for the past 10 or more years. I have averaged 2 days per week appearing in Court.

2. What percentage of these appearances was in:
(a) federal courts;

75%.

(b) state courts of record;

20%.

(c) other courts.

5%.

3. What percentage of your litigation was:
(a) civil;

80%.

(b) criminal.

20%.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

Criminal cases tried to verdict (sole counsel) -	50 cases.
Criminal cases commenced trial and negotiated plea after proceeding (sole counsel) -	25 cases.
Civil cases tried to verdict (sole counsel) -	5 cases.
Civil cases commenced trial and settled (sole counsel) -	5 cases.
Criminal cases tried to verdict (Associate counsel) -	5 cases.
Civil cases commenced trial and settled (Associate counsel) -	5 cases.
Bankruptcy cases tried to verdict (sole counsel) -	50 cases.
Bankruptcy cases commenced trial and settled (sole counsel) -	100 cases.
Bankruptcy cases (sole Trustee) -	7,000 cases.

5. **What percentage of these trials was:**
   (a) **jury;**

   20%.

   (b) **non-jury.**

   80% (Bankruptcy cases are without jury).

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

    (a) **the date of representation;**
    (b) **the name of the court and the name of the judge or judges before whom the case was litigated; and**
    (c) **the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.**

United States of America vs. William Charles Eppinette, Jr., 488 F 2d, 365 (1973) - This case is very significant to me because it was the first trial I ever conducted. The trial was conducted at the February 12, 1973 term of Federal Criminal Court in New Bern, North Carolina, and I represented the United States as a new Assistant U. S. Attorney. Judge (now Senior Judge) Franklin Dupree presided, and I recall being told it was Judge Dupree's first criminal trial. The defendant, Eppinette, was charged with "draft evasion". This was the first in our district of a number of "draft evasion" criminal prosecutions that took place during this era, and it set the tone and procedure for numerous later cases.

The U. S. Justice Department was also interested in this case as it was one of the early cases nationwide to consider the issue then prominent in our country. The principal defense theory was "selective prosecution". The defendant was convicted on 2 counts and sentenced to one year on each count, to run concurrently. I prepared and conducted the trial solely with the guidance of First Assistant U. S. Attorney, Weldon Hollowell. The Defendant was represented by Deborah G. Mailman, and I cannot locate her after 14 years.

The case was appealed, and I prepared Briefs and later argued the first appeal of this case before the Fourth Circuit. The trial court was reversed on the first appeal. There were numerous appeals in this case lasting past my tenure with the U. S. Attorney's office.

Judge Dupree's telephone number is (919) 856-4200
Weldon Hollowell's address and telephone number are Weldon Hollowell
Route 1
Edenton, NC 27932
(919) 482-4114

United States of America vs. Hal Clemit Derrick, and Burnett Wendell Finchum, 507 F. 2d 868 (1974) - This case is significant in that it was a lengthy and highly contested criminal conspiracy trial that took 8 days to try at the October 2, 1973 term of Federal Criminal Court in Washington, North Carolina before Chief Judge (now Senior Judge) John D. Larkins, Jr. I represented the United States as Assistant United States Attorney and conducted the trial solely under the guidance of First Assistant U.S. Attorney Weldon Hollowell.

A criminal conspiracy trial is difficult to present, and this was the first guilty verdict recalled in our district for a "criminal conspiracy" at that time and, so far as known, was the last of the "moonshine liquor" cases ever tried in the Eastern District of North Carolina.

There were 6 original defendants, involving activity in 3 states (Tennessee, Virginia, and North Carolina) and more than 35 witnesses for the government. All but one of the defendants were convicted by the jury. Two of the defendants appealed, and I prepared and filed the Appellee brief for the government. The trial court verdict was affirmed. Four of the defendants were represented by "out of state" attorneys, and I am unable to locate them. Two defendants were represented by North Carolina counsel, now deceased.

Judge Larkins' telephone number is (919) 448-2521
Weldon Hollowell's address and telephone number are Weldon Hollowell
Route 1
Edenton, NC 27932
(919) 482-4114

James C. Galloway vs. American Brands, Inc., et al, Civil No. 75-0112-CIV5, District Court, Eastern District of North Carolina- This is a significant case in that it was a class action civil case filed in the U. S. District Court for the Eastern District of North Carolina on April 25, 1975 wherein the plaintiff sought to represent between 80,000 and 200,000 farmers from across four states who had allegedly been damaged by 30 corporate defendants committing anti-trust violations over a 5-year period in the sale of tobacco.

It was a private anti-trust action alleging that the defendants violated Sections 1 and 2 of the Sherman Act while purchasing tobacco from the plaintiff(s). Although the case never came to trial, the litigation proceedings, discovery, depositions and conferences took over 3 years and represented approximately 20% of my personal time from 1975 through 1978. Judge Franklin T. Dupree, Jr. dismissed the case on Novcember 8, 1978 on the grounds the class was too large to manage and, thus, no class action could be maintained. I represented the defendants, Greenville Tobacco Co., Inc. and Greenville Tobacco Company International, Inc.

The plaintiff was represented by 5 law firms and the defendants were represented by approximately 50 attorneys. The principal significance I was able to bring to the case was that I understood "selling tobacco at auction", knew the plaintiff personally, and had had significant practice before Judge Dupree as an Assistant U. S. Attorney.

NOTE: The plaintiff in this case died in 1986, and my firm handled his estate.

The counsel are too numerous to individually list.

Defense Committee Chairman: Robert B. Fiske, Jr.
Davis, Polk & Wardwell
Chase Manhattan Plaza
New York, NY 10005
(212) 530-4000

My client:
Greenville Tobacco Co., Inc.
Mr. Charles Howard (no relation)
(919) 355-2010

United States of America vs. Leo Barry Page, Case No. 82-11-01-CR-4, U. S. District Court for the Eastern District of North Carolina - This was a significant case in that it was a lengthy trial by jury in which my client, the defendant, L. B. Page, was charged with 4 counts (four separate years) of attempted evasion of income taxes.

U. S. District Judge Earl Britt presided at the week-long trial that was held at the Federal Court in New Bern, North Carolina during the period April 20-25, 1982. I was sole counsel for the defendant, and the United States was represented by two attorneys from the Department of Justice Tax Division in Washington, D.C., Justin Thornton and Mark Friend.

Approximately 20 witnesses were utilized in the trial. The defense was centered around the theory that the defendant delivered to his tax preparer, a government accountant (part time tax preparer), all of his records and there was, thusly, no intent to evade taxes.

The jury deliberated for one day and returned a verdict of guilty to two counts and not guilty to two counts. The defendant received a 5-year sentence with all but 90 days suspended.

Judge Britt complimented counsel for both sides on the excellent manner in which the case was prepared and presented.

I have continued to represent the defendant in the civil proceedings for repayment of approximately $500,000.00 in tax and penalty, and that matter has not been concluded.

Government counsel: Justin Thornton
Adams, McCullough & Beard
2000 M. Street, N.W.
Washington, D.C. 20036
(202) 223-0200 (after July 1, 1987)

Judge Britt's telephone number is (919) 856-4050

James E. Rouse, et al, vs. Clarence P. Stewart, et al, Case No. 77-265-CIV-5, U. S. District Court for the Eastern District of North Carolina - This was a significant "First Amendment"-type case in which the 5 plaintiffs were District Directors of the United States Agriculture Stabilization and Conservation Service (ASCS). The defendants were the State ASCS Executive Director and the State ASCS Committee members. The Complaint, filed on September 28, 1977, alleged that all of the District Directors that were transferred from one end of the state to the other with a 72-hour time allowance were Republicans and the one District Director not ordered to move was a Democrat, and the defendants ordering such massive and unusual transfers were recent appointees of the new Democratic Administration. The plaintiffs were career Civil Service employees and under the protection of the U. S. Civil Service Commission and the First Amendment and, allegedly, were being ordered to move to solicit their resignations.

U. S. District Judge Franklin Dupree granted a Temporary Restraining Order on September 28, 1977 returnable before Chief U. S. District Judge John D. Larkins on October 11, 1977 for hearing on preliminary injunction. Judge Larkins dissolved the Temporary Restraining Order and denied the preliminary injunction and referred the matter for administrative agency grievance procedure.

Plaintiffs appealed Judge Larkins' Order and, after Briefs and oral arguments, the Fourth Circuit overturned Judge Larkins' Order and restrained the defendants from transfering the plaintiffs. The parties then entered a Consent Judgment in June of 1979.

I represented the plaintiffs throughout the proceedings, assisted by Nigle B. Barrow, an associate in my office.

Bruce H. Johnson, Assistant U. S. Attorney, represented the defendants. Bruce H. Johnson's last known address is 1618 East Third Street, Duluth, Minnesota 55812.

Judge Dupree's telephone no. is (919) 856-4200
Judge Larkins' telephone no. is (919) 448-2521

James M. Ellis and Jessie Ellis Worthington, Debtors, Chapter 11 Farm Case, U. S. Bankruptcy Court for the Eastern District of North Carolina, Case Nos. M-84-00423-8 and M-84-00424-8 - This is a significant Farm Chapter 11 proceeding that has been before the U. S. Bankruptcy Court for the Eastern District of North Carolina since it was filed on March 13, 1984. The debtors are a brother and sister farm partnership that operates several farms in Edgecombe County, North Carolina. At the time of filing, their debts were in excess of $3.5 million, and the debtors estimated the value of their real and personal property in excess of $4.5 million. They owned over 3,200 acres of farmland and a livestock herd of over 1,000. They had 32 scheduled creditors, many of whom were represented by counsel in various aspects of the continuing proceeding. Principal creditors included the Farm Credit Service (Federal Land Bank and Production Credit Association) and Farmers Home Administration.

The debtors filed for Court-approved sales of approximately 1,700 acres of land and $250,000.00 worth of equipment, which was ultimately granted. I supervised all aspects of the liquidation of this property.

The debtors proposed a "Plan of Reorganization" of their remaining assets and U. S. Bankruptcy Judge Thomas M. Moore, after trial on the matter, approved and ordered the confirmation.

This is a typical farm reorganization, and it has taken approximately 20 trial days over the past 3 years. It is presently "reopened" to effectuate modifications to the Plan of Reorganization.

I have solely represented the debtors since the commencement of the case.

Debtor:
James M. Ellis
Route 4, Box 428
Tarboro, NC 27886
(919) 823-8323

Farm Credit Service counsel:
Edward Harper
P. O. Box 1220
Greenville, NC 27834
(919) 758-4257

Farmers Home Administration counsel:
Assistant U. S. Attorney Rudy Renfer
P. O. Box 26897
Raleigh, NC 27611
(919) 856-4530

Unsecured Creditor Committee
Counsel: Stephen L. Beaman
P. O. Box 1907
Wilson, NC 27893
(919) 237-9020

U. S. Bankruptcy Judge
Thomas M. Moore (919) 291-6414

House Resolution 803 - A Resolution Authorizing and Directing the Committee on the Judiciary to Investigate Whether Sufficient Grounds Exist for the House of Representatives to Exercise Its Constitutional Power to Impeach Richard M. Nixon, President of the United States of America - In January of 1974, while Assistant U. S. Attorney for Eastern District of North Carolina, I was called from the U. S. Department of Justice as to my interest in coming to Washington, D.C. to work on President Nixon's legal defense staff. I went to the White House in late January, 1974, and was interviewed by James D. St. Clair, Special Counsel to the President, and Fred Buzzhardt, Counsel to the President.

James St. Clair requested that I join him in this defense, and I resigned my position as U. S. Attorney and was appointed Staff Assistant to the President. I moved to Washington, D.C. and commenced my work in February, 1974.

I served with John A. McCahill as Assistant Special Counsel, and we had 8 additional staff attorneys. Mr. McCahill and I were responsible to oversee the staff attorneys and insure the preparation of the defense of the proceeding before the House Judiciary Committee. I was principally responsible for the coordination and preparation of the "events following the Watergate Break-In". This involved the allegations made by John Dean and the alleged "cover-up". Mr. McCahill had other areas of responsibility. Mr. St. Clair and two staff attorneys accomplished the preparation and Briefs for the Supreme Court case on "executive privilege" separately.

I personally drafted and compiled one of the four books submitted to the committee and used in the defense of the President, specifically, Book I, Events Following the Watergate Break In, June 19, 1972 - March 1, 1974, U. S. Government Printing Office, Washington, 1974.

I accompanied Chief Counsel St. Clair to all poceedings before the House Judiciary Committee during the period May, 1974-August, 1974, and was directly involved in the legal aspects of the President's defense until his resignation on August 9, 1974.

I remained on the White House staff until September 4, 1974, basically to coordinate the "closing down" of the legal staff office, reassignment of attorneys and personnel, and the delivery of all materials within the office to the proper authorities.

I returned to Greenville, North Carolina on September 4, 1974, and commenced my private law practice.

Special Counsel: James D. St. Clair
Hale & Dorr
60 State Street
Boston, MA 02109
(617) 742-9100

In Re Thomas Jefferson Allen and Judy D. Allen, Case No. 87-00185-M08, U. S. Bankruptcy Court for the Eastern District of North Carolina - This case is significant in that it was one of the first Chapter 12 (Family Farm Reorganization) cases I handled and one of the earlier cases in the United States to be confirmed.

In October, 1986, President Reagan signed into law the Family Farmers Bankruptcy Act of 1986, to be effective November 26, 1986. Having been knowledgeable of the new law and active in farm-related bankruptcy proceedings for a number of years, I felt this was an excellent relief for some distressed and depressed farm family situations. The T. J. Allen case was a prime example. The Allen family had availed themselves of various credit programs (disaster, farm operating, equipment type loans) with the Farmers Home Administration through several years; and as of their filing for relief on January 21, 1987, they had total debts of $650,000.00 and assets of $200,000.00.

There was obviously no way their farm operations would produce sufficient revenue to operate and service that debt. The genesis of this law is that the Court will enter orders valuing the debtors' property and, after trial, confirm a Plan of 3-5 years of repayment on the value of the property. If the debtors comply with the Plan, make the Plan payments and, after a Court-approved allowance for living expense, the remaining "disposable income" is paid to the Trustee for distribution to the unsecured class of creditors. The balance of the unsecured debt will be discharged and, thusly, the farm family debtors have a "light at the end of the tunnel".

After 3 separate days of hearings and trial on feasibility, Judge Thomas M. Moore confirmed Mr. and Mrs. T. J. Allen's Plan as prepared by me.

This is an example of approximately 20 farm family cases I have handled since November, 1986.

Counsel for Farmers Home Administration: Rudy Renfer
Assistant U. S. Attorney
P. O. Box 26897
Raleigh, NC 27611
(919) 856-4530

Bankruptcy Judge: Thomas M. Moore
(919) 291-6141

Hewett vs. Johns Manville, et al, Case No. 79-91-CIV-4, U. S. District Court for the Eastern District of North Carolina - In January of 1980, I was telephoned by Chief U. S. District Judge John D. Larkins, Jr. and requested to represent "all potential defendants" for a pre-Complaint video deposition of plaintiff, Hewett, whose death was expected imminently from advanced mesothelioma! The deposition had been scheduled for the following day at plaintiff Hewett's bedside.

I had never heard of mesothelioma nor asbestosis prior to this date. Judge Larkins entered an order appointing me to represent all prospective defendants in the matter.

This was the first asbestosis case in the Eastern District of North Carolina.

I did represent the prospective defendants at the deposition. I did, however, contact plaintiff's counsel to obtain names of prospective defendants and to notify their corporate legal counsel. Some did, in fact, obtain counsel in time for the deposition.

I continued to participate in the case as counsel for Pittsburgh Corning Corporation during the ensuing months of discovery and pre-trial litigation. The case was ultimately settled without trial. There have been numerous asbestosis cases subsequently in this district.

Plaintiff's counsel:

Thomas Taft
P. O. Box 588
Greenville, NC 27834
(919) 752-2000

Additional defense counsel:

Armistead Maupin
Maupin, Taylor & Ellis
P. O. Box 19764
Raleigh, NC 27619
(919) 781-6800

In Re Smith-Douglas, Inc., Case No. M-83-00478-5, U. S. Bankruptcy Court for the Eastern District of North Carolina - This is a significant case in the U. S. Bankruptcy Court as it has involved litigation as to responsibility in Bankruptcy for environmental clean up when competing parties are involved, and claims are pending in several other jurisdictions.

Smith Douglas, Inc. was purchased by Bernard R. Garrett from Borden, Inc., in 1982. Garrett shortly realized that it was not viable to maintain the company. Wells Fargo Business Credit had loaned approximately $10 million to Garrett to purchase Smith Douglas.

Garrett, in essence, abandoned Smith Douglas, Inc. and it went into Bankruptcy in the Eastern District of North Carolina in 1983. The assets were principally liquidated via Chapter 11 proceedings and proceeds less costs were remitted to Wells Fargo. Two major parcels of property remained, specifically, a $200,000.00 value parcel in Streeter, Illinois including a "gypsum mountain" with a "clean up" estimate of $10 million. A similar situation, with smaller "clean up" numbers, existed in Kinston, North Carolina.

I was employed by Bernard Garrett to represent him in this Bankruptcy proceeding and to insure that the former owner, Borden, Inc., be assessed the cost of "clean up" and, further, to obtain full "off set" against his remaining guaranteed debt of approximately $3.5 million to Wells Fargo. The matter has not been fully resolved. One significant aspect of the case is the question of the responsibility of a bankrupt corporation and/or its creditors and successors and predecessors in interest to provide for expensive environmental clean up.

This case has involved approximately 10 trial days to date.

Co-counsel:	John Carey Watkins, Bates & Handwork 1200 National Bank Building Toledo, OH 43604 (419) 241-2100
Trustee:	Gregory B. Crampton P. O. Box 18237 Raleigh, NC 27619 (919) 781-1311
Wells Fargo counsel:	Thomas B. Anderson, Jr. 200 Lincoln Plaza 500 North Akard Street Dallas, TX 75201 (214) 740-3000

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege).**

In 1973, I was assigned, along with First Assistant U. S. Attorney, Weldon Hollowell, the responsibility of reviewing known facts, including crime scene inspection, as related to the "Captain Jeffrey MacDonald Murder Case" and to write a prosecutive analysis for the criminal division of the U.S. Department of Justice. I prepared this fifty-four-page Memorandum and it was submitted by U. S. Attorney Thomas P. McNamara on June 26, 1973. I was convinced of Captain MacDonald's guilt but concluded that, due to the lack of a solid motive and the massive amount of complex evidence for a jury, there would be only a 20%-30% chance of conviction. Five years later, the case was tried in the Eastern District of North Carolina, and MacDonald was convicted.

During the past five years, the "farm community" in my region has been devastated as a result of many factors including drought, decline of commodity prices, expensive production costs (fertilizer), etc. Resultingly, many farmers have been forced to seek relief in the U. S. Bankruptcy Courts. I have been heavily involved in representing these farmers and in seeking revisions to the Bankruptcy laws relative to the farming community. I have personally represented approximately fifty farmers in eastern North Carolina in these matters and have spoken at numerous farm organization meetings to explain the methods of relief available.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   I have three (3) income sources that would be a conflict if confirmed for the Federal Judiciary. These are: (1) Standing Chapter 13 Trustee for the Eastern District of North Carolina, (2) partnership in my law firm, and (3) partnership interest in the building my firm utilizes as its office.

   I will, upon my confirmation, and prior to being sworn in as a judge, immediately resign my position as Standing Chapter 13 Trustee, and liquidate for cash my interest in the two partnerships (law firm and law firm building) in which I have a financial interest.

   I would not liquidate my other business interests unless and until it was advisable or required that I do so.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of issues and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I would recuse myself from any case in which a conflict of interest exists.

   I would consider a conflict of interest to exist wherever the circumstances described in 28 U.S.C. §455 exist.

   I shall keep myself informed relative to my financial interests, and those of my wife and minor children.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.**

   None.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500.00 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here).**

   Executive Personal Financial Disclosure Report (SF-278) is attached hereto.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   Attached.

6. **Do you currently belong, or have you belonged, to any organization which discriminates — through either formal membership requirements or the practical implementation of membership policies — on the basis of race, sex, or religion? If so, list, with dates of membership. What have you done to try to change these policies?**

   I do not belong to any organization which discriminates in any manner.

7. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   I served as County Chairman of my political party for 2 terms (4 years), 1974-1978, and Congressional District Chairman for 2 terms (4 years), 1978-1982. In that capacity, I counseled with candidates in my State and party. I have never held a position in a political campaign so far as I recall.

SF 278 (Rev. 1984)
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U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3209-0001

Page 1

Reporting Status (Check Appropriate Box)		Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
☐ Incumbent	☒ New Entrant, Nominee, or Candidate ☐ Termination Filer				
Reporting Individual's Name	Last Name HOWARD	First Name and Middle Initial MALCOLM J.			
Position for Which Filing	Title of Position U. S. DISTRICT JUDGE NOMINEE	Department or Agency (If Applicable) N/A			
Location of Present Office	Address (Number, Street, City, State and ZIP Code) 200 EAST FOURTH STREET GREENVILLE, NORTH CAROLINA 27834	Telephone No. (Include Area Code) (919) 758-1403			
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held NONE				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination UNITED STATES SENATE COMMITTEE ON THE JUDICIARY	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No			
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual Malcolm Howard	Date (Month, Day, Year) 9/9/87			
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)			
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)			
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)			

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

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278-108

NSN 7540-01-070-8444

SF 278 (Rev. [illegible])
FPM Chapter 734
U S Office of Personnel Management

Form Approved
OMB No [illegible]

Reporting Individual's Name	Assets and Income	Page Number	2	Schedule A
HOWARD, MALCOLM J.				

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000? ▼

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples	X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$50,000			
1	HOWARD, BROWNING, SAMS, POOLE, HILL & DANIEL Greenville, NC					X									ptnrshp income							X					
2	H & B ASSOCIATES Greenville, NC						X			X									X								
3	P & H ENTERPRISES Greenville, NC				X					X								X									
4	STANDING CHAPTER 13 TRUSTEE Greenville, NC	X													trustee commsn							X					
5	CDH/MJH - 50 ACRE FARM Kinston, NC				X					X						X											
6	GALVESTON ASSOCIATES Pittsburgh, PA					X				X						X											
7	USAA INCOME PROPERTIES San Antonio, TX		X							X						X											
8	USAA MUTUAL FUND				X				X			X							X								
9	AMERICAN CAPITAL PACE MUTUAL FUND (HR-10)				X				X			X								X							
10	HUTTON PRECIOUS METALS MUTUAL FUND		X						X			X					X										

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Reporting Individual's Name				
HOWARD, MALCOLM J.	**Assets and Income**	Page Number	2 contd.	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding *$1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples:	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	HUTTON PRECIOUS METALS MUTUAL (DC)				X				X			X					X										
2	HUTTON DUIT #48 (DC)			X								X					X										
3	USAA MUTUAL FUND (DC)			X					X			X					X										
4	TEMPLETON WORLD FUND (DC)			X					X			X					X										
5	USAA MUTUAL FUND (S)		X														X										
6																											
7																											
8																											
9																											
10																											

PREVIOUS EDITION USABLE

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name
HOWARD, MALCOLM J.

Page Number	3	Schedule B	

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

S or DC		Identification of Assets	Type of Transaction (X) Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (X) $1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Example:	X Y Z Common	X			2/1/83			X			
1		N/A										
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. **Exclude** transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), **exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source.** See instructions for further exclusions.

NONE ☐

S		Source (Name and Address)	Brief Description	Value
S	Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1		N/A		
2				
3				
4				
5				
6				

PREVIOUS EDITION USABLE

278-108

SF 278 (Rev. 1/86)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name
HOWARD, MALCOLM J.

Page Number	4	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)				
						$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
	John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1	First Federal Savings & Loan, Greenville, NC	Mortgage on real estate	1986	P + 1%	30 yrs.				X	
2	Wachovia Mortgage Corporation, Winston-Salem, NC	Mortgage on rental property	1986	14%	20 yrs.		X			
3	First Citizens Bank & Trust Company, Greenville, NC	Mortgage on 50 acre farm & rental property	1982	P + 1%	10 yrs.		X			
4	Anna Royer, Greenville, NC	Mortgage on rental property	1980	9%	30 yrs.			X		
5										
6										

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example: Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/78 ptnership agmnt.
Will receive partnership share of Howard, Browning, Sams, Poole, Hill & Daniel upon	HOWARD, BROWNING, SAMS, POOLE, HILL & DANIEL, Greenville, NC	12/86 ptnership agmn
liquidation in accordance with agreement; estimated sale is $20,000.00		

PREVIOUS EDITION USABLE

278-100

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name	HOWARD, MALCOLM J.
Page Number	5
Schedule	D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83
	HOWARD, BROWNING, SAMS, POOLE, HILL & DANIEL Greenville, NC	Law firm	Partner	9/74	present
	STANDING CHAPTER 13 (BANKRUPTCY) TRUSTEE, EDNC Greenville, NC	Court appointed bankruptcy trustee	Trustee	10/76	present
	H & B ASSOCIATES, a limited real estate partnership Greenville, NC	Real estate partnership	Limited partner	6/80	present
	P & H ENTERPRISES, a limited real estate partnership Greenville, NC	Real estate partnership	Limited partner	6/81	present

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	Howard, Browning, Sams, Poole, Hill & Daniel, Greenville, NC	Legal Services
	Standing Chapter 13 Trustee, Greenville, NC	Trustee Commission
	Bizzell D. Johnson, Rose Hill, NC	Legal Services in connection with Chapter 11 bankruptcy reorganization
	David Tyre, Lillington, NC	Legal Services in connection with Chapter 11 bankruptcy reorganization
	R. R. Brake Farms, Inc., Battleboro, NC	Legal Services in connection with Chapter 11 bankruptcy reorganization
	William W. Parker, Sunbury, NC	Legal Services in connection with Chapter 12 bankruptcy

PREVIOUS EDITION USABLE

278-108

MALCOLM JONES HOWARD
212 Chowan Road
Greenville, N.C. 27858

FINANCIAL STATEMENT

Assets	Value
Real Estate:	
Residence at 212 Chowan Road, Greenville, N.C.	$ 200,000.00
Buildings at 200 and 210 East Fourth Street, Greenville, N.C. owned by H&B Associates, (1/2 value)	265,000.00
Units 141A, 141B, 141F, Willoughby Park Condominiums, Greenville, N.C. (apartments - solely owned)	135,000.00
106 Paris Avenue and F-22 Twin Oaks, Greenville, N.C. owned by P&H Enterprises (1/2 value)	40,000.00
C. Dwight Howard/Malcolm J. Howard 50-acre farm in Lenoir County, N.C. (1/2 owned with brother) (1/2 value)	40,000.00
Beach cottage at 175 Land End Subdivision, Emerald Isle, N.C.	225,000.00
Galveston Associates, a Limited Partnership, Pittsburg, PA.	67,357.00
USAA Income Properties, a Limited Partnership, San Antonio, TX	2,500.00
TOTAL REAL ESTATE:	$ 974,857.00
Personal Property:	
Bank Accounts	$ 5,000.00
HR-10 Plan with American Capital Pace Mutual Fund, Acct. #14-670285341-0	21,596.00
IRA - USAA Mutual Funds	15,584.00
IRA - HIS Precious Metals Services,	2,656.00
4 automobiles	30,000.00
Cash value of life insurance	10,645.00
Household goods	20,000.00
Books and art	5,000.00
Notes receivables (Landvest, Inc.)	21,000.00
Interest in law firm (25% partner)	25,000.00
Office equipment and furniture	10,000.00
TOTAL PERSONAL PROPERTY:	$ 166,481.00
TOTAL ALL PROPERTY:	$1,141,338.00

Malcolm J Howard

Family Separate Accounts:

(Wife) -	IRA - USAA Cornerstone Fund	$ 3,429.00
	Cash value of life insurance	1,431.00
(Daughter, age 17) -	USAA Cornerstone Fund	13,177.00
	Hutton Precious Metal Mutual Fund	8,285.00
	Hutton DUIT #48	14,561.00
	Cash value of life insurance	132.00
(Son, age 13) -	Templeton World Fund	5,473.00
	Hutton Precious Metal Mutual Fund	8,285.00
	Home Federal Savings (cash)	10,378.00
	Cash value of life insurance	133.00
	TOTAL FAMILY SEPARATE ACCOUNTS:	$ 65,284.00

Liabilities:

Residence: Home Federal Savings and Loan	$ 89,317.00
200 and 210 East Fourth Street (H&B Associates, a Partnership - 1/2 debt):	
First Federal Savings and Loan	65,995.00
First Citizens Bank	27,500.00
Anna L. Royer	54,889.00
106 Paris Avenue and F-22 Twin Oaks - Pitt Enterprises, a Partnership (1/2 debt):	
Wachovia Mortgage Company	21,150.00
First Federal Savings and Loan	10,308.00
D. Dwight Howard/Malcolm J. Howard - 50-acre farm (1/2 debt):	
First Citizens Bank and Trust	3,407.00
Federal Land Bank	31,200.00
Units 141A, 141B and 141F, Willoughby Park Condominium: First Federal Savings and Loan	119,648.00
Beach cottage: Home Federal Savings and Loan	167,000.00
Galveston Associates (remaining payments to Limited Partnership)	26,100.00
GMAC (1986 Pontiac)	11,225.00
TOTAL:	$627,739.00

Malcolm J Howard

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

The principal "pro bono" activity I have engaged in for the past five years is helping distressed farmers. I have given of my time and personal expense to attend farm meetings and speak to the groups on available relief. I established in my firm "free conference" to discuss with any client his problem - to ascertain "without expense" if there was an equitable legal solution.

I have assisted the Legal Services Corporation in my town with Bankruptcy matters (consumers and farmers) without charge on a regular basis.

I participated with the "indigent" program in State and Federal Courts providing legal services (mostly criminal cases) at reduced court-approved rates.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates — through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

I do not belong to any organizations that discriminate on the basis of race, sex or religion, either formally or practically.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

The North Carolina Bar Association has a "Judiciary Selection Advisory Committee", established in 1986. This Committee circulated a questionnaire to every Bar Association member in North Carolina concerning my qualifications for appointment. It is my understanding that tabulations (results) from this poll will be provided to this Committee.

On or about May, 1987, U.S. Senator Jesse Helms telephoned me to inquire if I would be willing to serve as a Federal District Judge if confirmed. He told me that I had been recommended to him by several persons. I responded that I would proudly serve to the best of my ability. On May 21, 1987, Senator Helms, by letter to the President, recommended me for consideration.

In June of 1987, I was invited to interview with officers in the U. S. Department of Justice as relative to my legal experiences and background. Since that date, I have completed a host of questionnaires.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

   No.

5. Please discuss your views on the following criticism involving "judicial activism".

   The role of the Federal Judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

   b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

   c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

   d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness;

   e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

   Article I of our Constitution provides for the making of all laws by the elected representatives of the people of the United States of America. These representatives are elected for specified terms and must obtain the acquiescence of their constituents to continue for succeeding terms.

   Article III of our Constitution places in the judiciary only the power to decide "cases in law and equity" arising under the Constitution and the laws of the United States. The power and authority of the judiciary is, therefore, properly limited to cases under the Constitution and the laws that have been adopted from time to time by our duly elected representatives.

There are no provisions in the Constitution for "judicial law making." In my opinion, the evolution of the term "judicial activism" has arisen as a result of some judges going beyond their constitutionally mandated authority and imposing their own ideals, beliefs and theories under the guise of "constitutional interpretation or legislative intent."

If an issue clearly calls for "constitutional interpretation," then the judiciary must attempt to decide that issue by referring to the Constitution and proper legal precedent. In reaching its decision, the judiciary should not attempt to impose its own beliefs or ideals but should rely solely on the Constitution and legal precedent. In like manner, if a law passed by our elected representatives is properly brought before the courts for "constitutional testing," then it is the responsibility of the judiciary to use the appropriate tools, including the Constitution and legal precedent, to decide if the particular law meets these tests. If it does, then the law should stand. If the particular law does not meet the proper tests, then it should be declared unconstitutional and, therefore, unenforceable. The judiciary does not, and should not, have the authority to "remake" the particular law or statute to reflect its own philosophy or beliefs.

The process should be as efficient and orderly as possible. The process should attempt, within reasonable bounds, to focus upon the particular grievance before the Court and leave broader revisions of general problems within our society to the people through their elected representatives. This, I believe, is the clear meaning of the Constitution as it relates to the finely balanced divisions of authority and power between the three branches of our government.

In my opinion, the judiciary's responsibility is to lean away from all encompassing decisions utilizing individual plaintiffs as vehicles for imposing far reaching orders effecting broad classes of individuals and imposing broad duties upon government and society. The judiciary should decide only those cases properly before it and should leave the legislative process to our elected representatives, as specifically provided for in Article I of the Constitution.

I fully recognize that there are times when the judiciary must speak. However, when the judiciary does speak, it should do so clearly, concisely, and to the point, always keeping in mind the Constitution and its explicit separation and division of authority.

ABA
AMERICAN BAR ASSOCIATION **Standing Committee on Federal Judiciary**
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

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1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

October 2, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: MALCOLM J. HOWARD
United States District Court
Eastern District of North Carolina

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Malcolm J. Howard for appointment as Judge of the United States District Court for the Eastern District of North Carolina.

Our Committee is unanimously of the opinion that Mr. Howard is "Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

NORTH CAROLINA BAR ASSOCIATION

P.O. Box 12806 Raleigh North Carolina 27605

NC BAR CENTER
1312 Annapolis Drive
Raleigh, NC
(919) 828-0561
NC WATS
800-662-7407

President
E. James Moore
PO Box 1091
N Wilkesboro 28659
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3000 NCNB Plaza
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July 17, 1987

The Honorable Joseph R. Biden
US Senate Judiciary Committee
S-R 489 Russell Building
Washington, DC 20510

Re: NC Federal Judicial Recommendation: Malcolm J. Howard,
Eastern District of North Carolina

Dear Senator Biden:

In accordance with the procedures outlined in an Association letter of June 11, 1987 (attached), we now would like to report to you the results of that survey which was mailed to over 7,500 members of the North Carolina Bar Association.

It gives me great pleasure to advise you that of those members of the North Carolina Bar Association who felt qualified to rate the credentials of Mr. Howard, the vast majority of them responded with a solid "very qualified" rating. For your information, the actual breakdown is attached. The "Other" category in the breakdown indicated those members of the Association who did respond but for various reasons did not affix a rating. (In most instances the respondent indicated that they knew the individual but did not feel qualified to rate him from personal knowledge, according to our requirements as applied to a federal judicial nomination.)

I would like to emphasize that we sought "...honest, frank and forthright opinions," and asked our members to respond only if they could, from personal knowledge, fairly evaluate the qualifications of the individual.

We hope this information is of assistance to you. In accordance with our announced policy, we are releasing this information to the American Bar Association's Standing Committee on the Federal Judiciary, US Senators Helms and Sanford, and to Mr. Howard.

Sincerely,

E. James Moore

E. James Moore
President

EJM:kb
Enclosure

CC: Malcolm J. Howard
Senator Jesse Helms
Senator Terry Sanford
James A. Howard, Jr.
Henry M. Whitesides
Richard E. Thigpen, Jr.
John Q. Beard
Allan B. Head

Survey Results

NC FEDERAL JUDICIAL RECOMMENDATION:
MALCOLM J. HOWARD, EASTERN DISTRICT

Conducted by the Selection Advisory Committee
of the
North Carolina Bar Association

Very Qualified	143
Qualified	38
Not Qualified	19
Other	149
Total Responses	349

RUDY LOZANO

Birth:	July 10, 1942	East Chicago, Indiana
Legal Residence:	Indiana	
Marital Status:	Married	Angeles Gonzalez Lozano 2 children
Education:	1960 - 1963	Indiana University B.S. degree
	1963 - 1966	Indiana University School of Law J.D. degree
Bar:	1966	Indiana
Experience:	1966 - present	Spangler, Jennings, Spangler & Dougherty, P.C. Of Counsel (1966-1974) Partner (1975-present)
Office:	8396 Mississippi Street Merrillville, Indiana 46410 219 769-2323	
Home:	241 Meadowridge Road Valparaiso, Indiana 46383	

To be United States District Judge for the Northern District of Indiana

Rodolfo "Rudy" Lozano

2. Address: List current place of residence and office address.

Residence: 241 Meadowridge Road
Valparaiso, Indiana 46383

Office: Spangler, Jennings, Spangler & Dougherty, P.C.
8396 Mississippi Street
Merrillville, Indiana 46410

3. Date and place of birth.

July 10, 1942, East Chicago, Indiana

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married - Angeles Gonzalez Lozano - Housewife

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Indiana University, Bloomington, Indiana
1960-1963, BS Business (Accounting)

Indiana University, School of Law
Bloomington, Indiana,
1963-1966, JD (1967)

Lawyers Institute of John Marshall Law School,
Chicago, Illinois, 1967-1970,
Post-Graduate work - Admiralty

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Spangler, Jennings, Spangler & Dougherty, P.C.
8396 Mississippi Street
Merrillville, IN 46410
May 18, 1966 to present
1966-1974 - Of Counsel (Independent Contractor)
1975 to present - Shareholder, Member of the
Board of Directors, and Senior Partner

1976 to present - Trust No. 2409 (Farm Property)
1979 to present - Trust No. 2851 (Office Building)
1974-1982 Trust No. 2160 (Marshall House Office Building)
(No longer have interest.)
(All trusts were through the Lake County Trust Company as Trustee.)

Transportation and Products Liability Legal Directory
(No longer published.) Partner.
1985 - Langelier One Park Avenue Associates, P.O. Box 10043, New York City, NY 10249 - Limited Partnership
1982 - Efron II Investors, 5246 Hohman Avenue, Hammond, Indiana 46320 - Limited Partnership
1983 - Efron III Investors, 5246 Hohman Avenue, Hammond, Indiana 46320 - Limited Partnership

serial number and type of discharge received.

U.S. Army Reserve - 1966-1972 - Rank E-4
Honorable Discharge - Serial No. ER 17758165
(Later changed to 317-38-2600)
Served in 915th Transportation Company, East Chicago, IN, the 579th Transportation Company in East Chicago, IN, and the 7th JAG Det., Chicago, IL.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association;
American Judicature Society;
Association of Trial Lawyers of America;
Federal Bar Association;
Gary Bar Association;
Hispanic Bar Association - Vice President, 1984-85;
Indiana Defense Lawyers Association;
Indiana State Bar Association;
Lake County Bar Association;
National Hispanic Bar Association;
Phi Delta Phi Legal Fraternity;
Seventh Circuit Bar Association.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Indiana	5/18/66
United States District Court Southern District of Indiana	5/18/66
United States District Court Northern District of Indiana	5/30/66
United States Court of Appeals Seventh Circuit	4/24/87
Supreme Court of the United States	2/21/78

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None

13. Health: What is the present state of your health? List the date

None

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of records;
(c) other courts.

3. What percentage of your litigation was:
(a) civil;
(b) criminal;

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:

a.2 N/A

a.3 Spangler, Jennings, Spangler & Dougherty, P.C.
8396 Mississippi Street
Merrillville, Indiana 46410
May 18, 1966 to present
1966-1974 - Of counsel (Independent Contractor)
1975 to present - Shareholder, Member of the Board of Directors, and Senior Partner.

b.1 1966-1969

Civil defense, collection, subrogation, criminal, and probate. I assisted partners in the preparation and trial of civil and criminal cases in state and federal courts.

1970-1975
Twenty percent (20%) general practice, eighty percent (80%) litigation. I represented both plaintiffs and defendants in civil litigation. Most litigation consisted of insurance defense, including automobile, truck and general liability matters. I also handled criminal litigation, and represented Army personnel on military matters. During this time I was lead counsel in all of these cases.

1975-1987
During this period the emphasis of my practice was major civil litigation consisting of automobile, truck, industrial accidents, malpractice actions (legal and medical), and criminal matters. Again, I handled civil litigation for both plaintiffs and defendants.

b.2 Various individual clients for representation as plaintiffs or defendants in both civil and criminal litigation.

Criminal

I have been sole counsel in several criminal cases. In some instances, I have acted as co-counsel upon the request of fellow attorneys. I have also been appointed by the Federal Court to represent indigent litigants in criminal matters pursuant to the Criminal Justice Act.

Automobile

I have represented numerous individual plaintiffs and have served as co-counsel with other attorneys in representation of plaintiffs. I have represented several defendants insured by one or more of the following companies: American States Insurance Company; State Farm Insurance Company; Allstate Insurance Company; and, numerous other companies.

Truck

Companies whose insureds I have represented include: Carriers Insurance Company; R.W. Trucking; and, numerous other companies.

Medical Malpractice

Insurance Company, and Allied Insurance Company. Among the health care providers I have represented are the following medical institutions: St. Anthony Medical Center, Crown Point, Indiana; St. Mary Medical Center, Gary and Hobart, Indiana; and The Hammond Clinic, Munster, Indiana.

Legal Malpractice

CIGNA Insurance Company

Industrial Accidents

Inland Steel Company

c.1 Frequently

c.2 25% Federal – 75% State

c.3 90% Civil 10% Criminal

c.4 Although it is impossible to give an exact count, I would estimate I have tried 50 to 100 major jury trials in which I was chief and/or sole counsel. I would estimate that I have tried some 10 to 20 major bench trials in which I was sole counsel. Early in my career I had numerous jury and bench trials in subrogation and collection cases. I am unable to give an estimate as to the number of these trials.

c.5 90-95% Jury 5-10% Non-Jury

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1) State of Indiana v. Hubinger. Lake Superior Court, Criminal Division, Cause No. 3CR-157-878-693. The case was a five day jury trial before the Honorable James Kimbrough (Deceased), on or around April 1979. The Deputy Prosecutor in the case was James J. Olszewski, Lake County Prosecutor's Office, Crown Point, Indiana 46307, Tel. (219) 738-2020 and Mr. Scott King of 575 Broadway, Gary, Indiana, Tel. (219) 882-8228. I represented Daniel Hubinger who was charged with murder. Mr. Hubinger was accused of murdering the deceased by beating him across the head numerous times with a baseball bat and by stabbing him in the side with a cooking fork. The defendant had given two statements to the investigating police officer before I was retained as counsel. The prosecutor proposed a plea bargain of a thirty (30) year sentence. I defended the case on the theory of self-defense. I investigated the case, took all discovery, and was sole

Court, Northern District of Indiana, Hammond Division, Civil No. H78-78. This case was a four day jury trial before the Honorable Allen Sharp, beginning on February 8, 1982. Mr. Kermit Hilles, Assistant Attorney General, State Office Building, Indianapolis, Indiana, Tel. (317) 232-6201, represented the State of Indiana. Plaintiff's attorneys were Joel C. Levy and Gregory R. Lyman, 9013 Indianapolis Boulevard, Highland, IN 46322, Tel. (219) 972-2660. Guy Boruff, an Indiana State Police Officer, stopped and arrested Dr. Stachniak, an Illinois dentist, for speeding. While in Officer Boruff's vehicle and while being advised of the arrest and bonding procedure, Dr. Stachniak became abusive and argumentative. Dr. Stachniak was then advised that he was going to be transported to the County Jail. While Officer Boruff was in the process of pulling up to instruct Mrs. Stachniak to follow the police vehicle to the jail, Dr. Stachniak exited Officer Boruff's vehicle and was injured when the police vehicle ran over his foot. Dr. Stachniak was charged with speeding and fleeing a police officer. He was found guilty in the Porter County Court of speeding and acquitted of the latter charge. Dr. Stachniak later sued Officer Boruff for his personal injuries and for civil rights violations. I was hired by the State Police insurance carrier to defend the personal injury suit. The Attorney General's office was defending the civil rights charge. Before the commencement of trial, it was agreed that I would act as lead counsel. I handled all aspects of the trial, except for the brief examination of two witnesses. I jointly conducted all trial preparation and discovery with Deputy Attorney General Kermit Hilles. The jury found in favor of Officer Boruff on all claims.

3) Frasca v. St. Mary Medical Center. LaPorte Circuit Court, Cause No. 42772-C. This case was a two week jury trial beginning on February 14, 1983, before the Honorable Robert Gettinger. Counsel of record included G. Edward McHie, 53 Muenich Court, Hammond, IN 46320, Tel. (219) 931-1707 and Albert C. Hand, 3235 45th Street, Highland, IN 46322, Tel. (219) 924-2640 for the plaintiff. I represented defendant along with Mr. Gene M. Jones, 916 Lincolnway, LaPorte, Indiana 46350. Tel. (219) 879-6300. Joseph Frasca had shoveled snow early in the day and later developed chest pains. He attempted to see his family doctor but was allegedly instructed by telephone to go to the emergency room and have an EKG performed on him. Instead, he went to the out-patient services and advised them that his family doctor wanted him to have an EKG. Without having a doctor's written order, which was contrary to hospital policy, the hospital technicians proceeded to give Mr. Frasca an EKG and then instructed him to go home. Mr. Frasca died approximately one hour later from a heart attack. A wrongful death action was brought against the hospital and individual employees. My firm was hired to represent all defendants. Other members of my office did most of the discovery and the initial preparation of the case. I handled the remainder of the case through trial. I was lead counsel at the jury trial and was assisted by Mr. Gene Jones, my local counsel. The jury trial lasted two weeks which resulted in a verdict in favor of all defendants.

4) Scott Forsythe, et al v. James J. Hantz. This was a three day jury trial commencing on April 23, 1984 in the Jasper Superior Court, Cause No. CP 82-385, before the Honorable J. Philip McGraw. Plaintiffs were represented by Mr. Thomas G. Fisher, 128 North Cullen Street, Rensselaer, IN 47978, Tel. (219) 866-4656 (Judge Fisher is now with the Indiana Court of

Illinois, 60601, Tel. (312) 372-3822. I represented the defendants along with Mr. Thomas B. Dumas, my local counsel, 119 West Harrison Street, Rensselaer, IN 47978. Tel. (219) 866-4158. Scott Forsythe, a six year old child, ran across a residential street from behind parked cars. While in the process of crossing the street, he was struck by Mr. Hantz's van, and sustained multiple fractures to his arm, collar bone, pelvis, leg and skull. I was retained as defense counsel for Mr. Hantz. Because of a depressed skull fracture one and one-half times the size of a silver dollar, the doctors testified there was permanent brain damage. The issues presented by the case were negligence of the defendant in proximately causing the accident, the proximate cause of the alleged injuries, and the nature and extent of the injuries. Because the child in question was under the age of seven (7), contributory negligence could not be attributed to him. Due to this fact, the case was particularly difficult to defend because any negligence on the part of the defendant would have resulted in a verdict for the plaintiff. The case was tried and the jury returned a verdict for the defendant. I was lead counsel throughout the trial.

5) Wiers v. Inland Steel Company. This case was a three day jury trial beginning on April 7, 1980, before the Honorable Robert Gettinger in the LaPorte Circuit Court, Cause No. 42067C. Plaintiff's counsel was Kenneth D. Reed, 5231 Hohman Avenue, Hammond, IN 46320 (219) 937-1500. I represented Inland Steel Company, and Attorney Donald E. Transki, 902 Pine Street, Michigan City, IN 46360. Tel. (219) 872-7261 represented Indiana Bell. Larry Wiers was an independent truck driver who brokered his semi trailer with Artim Trucking. While going over to Inland Steel to pick up a load of steel on a very cold and snowy day, Mr. Wiers sustained very severe injuries. After stopping his vehicle on Inland's property, Mr. Wiers crossed a grassy area covered with snow in order to make a phone call to his dispatcher. On attempting to return to his vehicle, Mr. Wiers slipped and fell and severely fractured and injured his ankle. Mr. Wiers sued both Inland Steel and Indiana Bell Telephone Company. I tried the case for Inland Steel. Plaintiff's case was based on duty owed an "invitee". The jury returned a verdict for defendants. The case was affirmed on appeal in an unpublished opinion.

6) USA v. William Everett Baity. Criminal No. 72 HCR 98, United States District Court for the Northern District of Indiana, Hammond Division before The Honorable George Beamer (Deceased). This two day jury trial began on February 7, 1973. Attorneys John Flynn (no longer practicing law in Indiana) and Joseph Van Bokkelen, 3737 45th Street, Highland, Indiana, Tel. (219) 924-9200, were the Assistant United States Attorneys involved in the case. I represented Mr. Baity pursuant to a Criminal Justice Act appointment. Mr. Baity was charged with possession of a sawed off shotgun and possession of a non-registered weapon. At the time of the alleged incident, Mr. Baity was unemployed. It was alleged by Gary Police officers that they saw Mr. Baity in possession of an illegal weapon and that they saw him throw the weapon into an abandoned building. The officers searched the abandoned building and found a sawed off shotgun with no serial number. Mr. Baity testified that earlier he had purchased a bottle of alcohol because he was despondent. As he and his friend walked down the street, they consumed the contents of the bottle. When the bottle was empty they threw it into an abandoned building. Shortly thereafter, Mr. Baity was stopped and arrested. I handled all aspects of the case from the

7) Lawrence McHugh and Paula McHugh, et al v. Dr. E.T. Pappas, The Ross Clinic, Methodist Hospital, Frank Hrisomolis, M.D., James Schaffer, M.D., and Thomas Middleton, M.D. In the United States District Court for the Northern District of Indiana, Hammond Division, before the Honorable Jesse Eschbach and the Honorable Philip McNagny, under Civil No. 73 H 227 (2). Trial ran from April 11, 1978 through April 19, 1978. Plaintiff was represented by Attorney Joel C. Levy, 9013 Indianapolis Boulevard, Highland, Indiana, Tel. (219) 972-2660. Defendant, Pappas, was represented by Attorney Lester Murphy, Jr., 720 West Chicago Avenue, East Chicago, Indiana, Tel. (219) 397-2401. Defendant, Methodist Hospital, was represented by Attorney Thomas Clifford (no longer practicing law in Indiana). Defendant, Frank Hrisomolis, M.D., was represented by Mr. R. Stanley Lawton, One American Square, Box 82001, Indianapolis, Indiana, (317) 236-2100 and myself. Baby McHugh was born at Methodist Hospital. Plaintiff's father was in the process of moving his family to Bloomington, Indiana where he was about to enter law school. Shortly after the birth, Dr. Pappas, who delivered plaintiff, ordered blood taken from plaintiff's heel for a PKU exam. The results came back positive. However, because this exam could have false positives, plaintiff was recalled to the hospital for another blood test. This blood sample was sent to a laboratory in Chicago, which found the results to be negative. Because these tests did not have false negatives, the family was allowed to move to Bloomington. While living in Bloomington, the plaintiff had problems reaching developmental milestones. The family physician, Dr. Hrisomolis, could not explain plaintiff's problems. He had plaintiff examined by numerous specialists in the areas of orthopedics, ophthalmology, pediatrics, and pediatric neurology from Bloomington and Indianapolis. The specialists could find nothing wrong and indicated that plaintiff was normal but slow in reaching his milestones. While visiting in Valparaiso, plaintiff was examined by another physician, who also felt something was wrong, but could not solve the problem. He suggested plaintiff be examined at Children's Hospital in St. Louis. While in Children's Hospital, a resident placed a phenyl stick on plaintiff's wet diaper and it was learned plaintiff had Phenylketonuria. Evidence at trial indicated that Phenylketonuria could be treated by diet if it was diagnosed within the first year of a child's life. However, if not treated, swelling of the brain would result in irreversible brain damage. In this case, evidence indicated that plaintiff had suffered irreversible brain damage, and that his intellect would never progress beyond that of a four year old. This would create a significant problem in that his physical development would progress normally, thus requiring a full time male nurse to control him throughout his life. Suit was filed against Methodist Hospital, Dr. Pappas, Dr. Schaffer, Dr. Middleton, and Dr. Hrisomolis. Dr. Schaffer paid the full amount of his malpractice policy limits. Dr. Pappas and Methodist Hospital entered into loan agreements with the plaintiffs whereby they each paid approximately $360,000.00 Plaintiff wanted approximately $400,000.00 from Dr. Hrisomolis. The Judge strongly recommended $240,000.00. The defendant, Dr. Hrisomolis, offered $70,000.00 which was rejected by the plaintiffs. The jury returned a verdict for the defendant, Dr. Hrisomolis, and a verdict of $400,000.00 against the Methodist Hospital. Evidence of the loan agreement was not allowed to be introduced at trial. Attorney Lawton was chief counsel and I was his local counsel.

8) Joseph Tomsic, et al v. Joseph Rivich. This case was a

Broadway, Merrillville, Indiana 46410, Tel. (219) 769-1000 and Ms. Dawn Wellman, 225 North Delaware Street, Indianapolis, Indiana, 46204, Tel. (317) 632-6450. Defendant was represented by myself and Mr. John W. Barce, 103 North Jackson Avenue, Fowler, Indiana 47944, Tel. (317) 884-0383. Scott Tomsic had recently graduated from high school and had been attending a vocational school. Earlier on the day of the accident Mr. Tomsic had worked on his motorcycle. When finished, he decided to take the motorcycle on a "test drive." While doing so, Mr. Tomsic took a short-cut through Morton High School's parking lot. At the time, a baseball game had just finished on an adjoining field and people were crossing the school parking lot to enter their vehicles and go home. At the time of the accident in question, Mr. Rivich, who was one of the team coaches at the baseball game, was in the process of backing out of a parking space when he struck Tomsic's bike. As a result of the collision, Scott Tomsic suffered multiple fractures to his leg and had to undergo numerous surgeries. Medical testimony at the time of trial was that nothing further could be done to Mr. Tomsic's leg and there was severe permanent impairment. Plaintiff's lowest demand was $100,000.00. Defendant offered $20,000.00. The case was a three day jury trial. I was lead counsel at time of trial. The jury returned a verdict for defendant.

9) Erwin R. Watts, et ux v. William B. Todd, et al. This was a three day jury trial, beginning on October 20, 1986, before the Honorable Roger V. Bradford in the Porter Superior Court, under Cause No. 83 PSC 1737. Plaintiff's attorney was Mr. Calvin Hubbell, 802 LaPorte Avenue, Valparaiso, Indiana, Tel. (219) 462-0561. Mr. Watts was an elderly gentleman who resided in Lake Station, Indiana. At the time of the accident in question, there were several inches of snow accumulated from the night before that covered the sidewalk and street. Mr. Watts had been clearing snow with his lawn tractor. While in the process of pushing snow from his sidewalk and driveway across the street, he was struck by defendant's vehicle. Mr. Todd testified he did not see Mr. Watts until the moment of impact. He had glanced to the right for a split second to wave at a friend, and when he turned back the impact took place. Mr. Watts suffered numerous back injuries, including problems with bulging discs which were proximately caused by the accident and which were permanent. Mr. Todd had property damage. Mr. Watts sued and Mr. Todd filed a counterclaim. At issue in this case was the negligence of the parties as to lookout and control of their respective vehicles. Another issue presented dealt with the legality of operating a garden tractor, which was unlicensed, on the street. I was sole counsel for Todd. After a three day trial the jury found against the plaintiffs on their claim and in favor of the defendant, Todd, on the counterclaim.

10) Victor Oller and Mary Oller v. Charles E. Burns, Sr. This action was tried in the LaPorte Circuit Court under Cause No. 86548-C before the Honorable Robert Gettinger. It commenced on May 26, 1987. Plaintiff was represented by Mr. C. Jerome Smith, 5253 Hohman Avenue, Hammond, Indiana, Tel. (219) 932-1817, and Mr. R. Cordell Funk, 5253 Hohman Avenue, Hammond, Indiana, Tel. (219) 933-4700. Defendant was represented by myself and Mr. Gene M. Jones, 916 Lincolnway, LaPorte, Indiana, Tel. (219) 362-1577. Charles Burns was a retired steelworker who had been proceeding in a northerly direction along Columbia Avenue, and was in the process of making a left turn onto Highland Street when he was struck by a motorcycle operat[illegible] Vincent Oller. Mr. Burns testified

entered the intersection in question on a green light for north and southbound traffic. As a result of the accident Mr. Oller sustained very serious injuries including, but not limited to, several broken vertebrae and problems with his patella. Plaintiff demanded policy limits or $100,000.00, whichever was less, and indicated that the demand was not negotiable. Defendant made no offer but indicated that the case could be settled if plaintiff would accept substantially less than policy limits. I was lead counsel at the time of trial. The case was tried before a jury which returned a verdict for the defendant.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

1) Motley and Colquett v. C.B.S. Television. United States District Court, Northern District of Indiana, Hammond Division, Civil No. H79-458. This case was set as a jury trial before the Honorable Michael Kanne. Plaintiffs were represented by myself and Mr. Robert Hawk of Spangler, Jennings, Spangler & Dougherty, P.C., 8396 Mississippi Street, Merrillville, IN 46410, Tel. (219) 769-2323. Defendants were represented by Mr. Lawrence Gunnels who is now Vice-President and General Counsel for the Chicago Tribune, Chicago, IL 60606. (At the time of trial, he was with the Chicago based law firm of Reuben & Proctor.) Officer Virgil Motley was Assistant Chief of Police with the Gary Police Department and Officer Symeon Colquett was a high ranking detective. C.B.S. televised a series of programs alleging that Officers Motley and Colquett were taking drugs and weapons from the evidence and property room. After being sued for slander, C.B.S. refused to retract the allegations. I, along with my partner, Mr. Robert Hawk, represented both plaintiffs in this suit. The case presented the following complex legal issues: Constitutional rights concerning freedom of the press and disclosure by the press of the identity of confidential informants. Before the jury was selected the case was settled. The Court ordered that the settlement amount not be disclosed, other than to say "a very sizeable amount."

2) Horst G. Loechner & Monika M. Loechner v. Mark C. Brookshier and Ellsworth Freight Lines. Jury trial before the Honorable Allen Sharp in the United States District Court for the Northern District of Indiana. Hammond Division, under Civil No. H74-322. Trial commenced on March 2, 1977, lasting three days. Plaintiffs' counsel were William F. Carroll, 101 N. Main Street, Crown Point, IN 46307 (219) 663-1298; John R. Sorbello, 517 N. Main Street, Crown Point, IN 46307 (219) 663-5818; and Herman Barber, 517 N. Main Street, Crown Point, IN 46307 (219) 663-5818. The plaintiff was stopped in her automobile facing west on U.S. 30 at its intersection with Mississippi Street. While stopped, plaintiff's vehicle was rear-ended, pushing her vehicle several hundred feet west and into a ditch on the north side of the road. Defendant's truck driver, who also had his vehicle turn over into the ditch, panicked and ran from the scene. Plaintiff attempted to, but could not, get out of her vehicle because of being pinned under the dash. Spectators would not help the plaintiff because of fear of explosion and/or fire. The gas tank had ruptured and the car was smoking. It was after an initial

through the window opening. Finally, after seeing plaintiff crying and her hair on fire, a few spectators forced the plaintiff through the window. As a result of the accident, plaintiff suffered, among other things, a severe brachial plexus injury. Her physician testified to her total disability at trial. Defendant admitted liability and the case was tried solely on damages. The final negotiations before trial were a demand of $750,000.00 and an offer of $150,000.00. The case was worked up by myself and other members of this office; however, I was sole defense counsel at trial. During trial several experts testified, including but not limited to, physicians, economists and vocational and rehabilitation experts. After the evidence was in and after arguing instructions, the court suggested to the parties to undertake settlement negotiations again. The court indicated that the plaintiff's case had been severely damaged by the defendant's witnesses, and she might well get substantially under $100,000.00. The case was settled for $155,000.00.

3) Vert v. St. Margaret Hospital, et al. This case was eventually settled shortly before trial. During its pendency it was handled by two judges, the last being the Honorable Roger V. Bradford in the Porter Superior Court, under Cause No. 76 PSC 390. Plaintiff was represented by Attorney Barry Goldberg, 69 West Washington Street, Chicago, Illinois, Tel. (312) 332-2177 and Attorney James L. Sullivan, 9 Lincolnway, Valparaiso, Indiana, Tel. (219) 464-9571. Defendant, St. Margaret Hospital, was represented by Attorneys Patrick J. Galvin and W. Patrick Downes, 5231 Hohman Avenue, Hammond, Indiana, Tel. (219) 933-0380; Dr. Geraldine Peiffer was represented by Mr. David Jensen, 200 Russell Street, Hammond, Indiana, Tel. (219) 931-0560; Dr. James Platis was represented by Mr. Peter C. Bomberger, 9006 Indianapolis Boulevard, Highland, Indiana, Tel. (219) 972-2200; Dr. William Morris and Dr. Louis DePorter were represented by myself. Tammy Vert was born with a cleft lip and cleft pallet. Dr. DePorter delivered the child and Dr. Morris was the child's pediatrician. Shortly after birth it was decided that surgery should be done immediately to correct Tammy Vert's problems. Dr. James Platis, a plastic surgeon, performed the surgery to correct the problem. Dr. Peiffer was the anesthesiologist during the surgery. Problems arose during surgery. A "Code Blue" was called and the pediatrician was called "Stat" to the surgery room. When Dr. Morris arrived, Tammy Vert was pink, but appeared listless. It was also learned during surgery that Tammy Vert was given intercardiac adrenaline. Afterwards, as attending physician, Dr. Morris, followed the progress of Tammy Vert and numerous new problems developed, including an inability to get her off a respirator and recurring cyanotic episodes. At the time of the initial discharge, Dr. Morris' discharge summary indicated plaintiff suffered cardiac arrest during surgery. The anesthesiologist indicated plaintiff suffered a bradycardia (heart slow down). The plastic surgeon indicated surgery was "uneventful." After this, Tammy Vert's mother deserted her, and her father joined the Army. Tammy Vert's condition stabilized but she was diagnosed to be a quadriplegic. Her care was taken over by the Welfare Department. Some 13 years later, Tammy Vert's father reappeared and sued the hospital and doctors for malpractice. Litigation was difficult because of the time span between the surgery and the litigation. The issues in this case were: The proximate cause of Tammy Vert's handicap and the appropriate standards of care of various health care providers. Problems also arose because malpractice limits of the health care providers were substantially smaller at the time of treatment

basis of a structured settlement. However, Drs. [illegible] and DePorter paid only a small fraction of the total settlement and utilized only a small portion of their malpractice policy limits. All other defendants paid their limits or a very substantial portion of their limits. I handled over 95% of all aspects of the litigation.

4) Deborah Lynn McConathy v. Dr. Robert Schmitt, The Hammond Clinic, and Our Lady of Mercy Hospital. Civil No. H74-321, in the United States District Court for the Northern District of Indiana, Hammond Division, before the Honorable Allen Sharp. Plaintiff was represented by Attorney Clarence Borns, 1000 East 80th Place, Suite 500, North Tower, Merrillville, Indiana, Tel. (219) 769-6671; Dr. Robert Schmitt and The Hammond Clinic were represented by myself. Our Lady of Mercy Hospital was represented by Attorney William Travis, 8108 Forest Avenue, Munster, Indiana, Tel. (219) 836-6176 and Attorney George Bloom, 419 Ridge Road, Munster, Indiana, Tel. (219) 836-9884. Debra McConathy was an anorexic teenage girl with other psychological problems. In her early years, she was brought up in a maternally-controlled household where there was little respect for her father. Eventually she ran away with a circus, but was returned home. As a child, the plaintiff was always overweight. She eventually started a rigorous diet which led to a weight loss from 175 lbs to approximately 70 lbs. She was diagnosed by Dr. Robert Schmitt as anorexic. While being treated at Our Lady of Mercy Hospital, she periodically experienced starvation episodes. She would then gorge herself and later induce vomiting. Part of the medical treatment included rewards for proper eating. These rewards consisted of the use of the phone or weekend home-passes. Early one morning while making her rounds, a nurse discovered that plaintiff's stomach was greatly distended. The nurse described her stomach as appearing to be 18 months pregnant. After doctors placed a tube down plaintiff's throat, they learned that plaintiff's stomach was completely gangrenous. During and after emergency surgery for removal of her stomach, the plaintiff remained near death. After numerous procedures, plaintiff's life was saved. However, in addition to the loss of most of her stomach, the plaintiff also suffered some paralysis of her right extremities. This allegedly resulted from an injection to plaintiff's buttocks which struck her sciatic nerve. She alleged over-exposure to radiation from numerous x-rays taken, claiming the radiation caused her to become sterile. In her Complaint, plaintiff alleged malpractice, including but not limited to, forced feeding which eventually caused her stomach to burst. Defendants alleged that plaintiff's failure to eat caused her condition to weaken and her duodenum to collapse which in turn caused a cut-off of blood supply (volvulus). This eventually caused the stomach to become gangrene. Plaintiff's initial demand was $7,500,000.00. Plaintiff had over $125,000.00 in medical expenses. After numerous depositions of the parties, witnesses and experts, the case was eventually settled for $200,000.00.

5) Wayne Williams b/n/f Virlean Williams v. Dr. Lucian Lewis and Methodist Hospital. Civil No. H76-336 in the United States District Court for the Northern District of Indiana, Hammond Division, before the Honorable Philip McNagny and the Honorable James Moody. Plaintiff was represented by Attorney Byron Chudom, Tiebel's Plaza, Schererville, Indiana, Tel. (219) 838-9444. Defendant, Lucian Lewis, was represented by Attorney David Jensen, 200 Russell Street, Hammond, Indiana, Tel. (219) 931-0560. Defendant, Methodist Hospital, was

Baby Williams be incubated and given oxygen. Although Baby Williams survived, he developed Retrolental Fibroplasia (RLF), which caused problems with his retina and caused him to be almost totally blind. Suit was brought after the child was over ten years of age. Issues in the suit consisted of whether the defendants acted within the accepted standards of care at the time in question, the cause of plaintiff's sight problems, and the nature and extent of plaintiff's alleged injuries. Surveys of settlement in these types of cases averaged $750,000.00. Verdicts for plaintiffs averaged well over $1,000,000.00. After depositions of the parties, witnesses and experts, the case was settled for $220,000.00. I handled most of the discovery and all settlement negotiations.

6) Alice Gross v. Bell Diamond Express, Inc., et al This case was docketed under Cause No. C287-85 in the Jasper Circuit Court, before the Honorable E. Duane Daugherty. I represented the plaintiff along with Attorney Jeffery Oliveira, 7895 Broadway, Merrillville, Indiana, Tel. (219) 769-3383. Defendants were represented by Attorney Joseph Jaskowiak, 103 East Lincolnway, P.O. Box 2357, Valparaiso, Indiana, Tel. (219) 464-4961. Alice Gross was proceeding in a westerly direction in her vehicle on 5th Avenue in Gary, Indiana, when she was rear-ended by a large truck owned by Bell Diamond and operated by Michael E. Brown. Plaintiff alleged that she had been stopped for a red light for some time before being struck from the rear. The defendants contended that the plaintiff stopped suddenly and that they were unable to stop because of sudden brake failure. As a result of the accident, plaintiff complained of neck, upper extremity and lower back problems. Plaintiff had pre-existing spondylolisthesis but never had symptomatic problems. The treating neurologist and other physicians diagnosed plaintiff's problems as cervical disc, carpal tunnel syndrome, and strain of the lower back. Plaintiff underwent a cervical fusion. At the time of trial the plaintiff was a LPN and lost her job because of excessive absenteeism resulting from the surgery. Plaintiff was unable to get her old job back because the hospital was recruiting registered nurses. At the pre-trial conference, the Judge indicated that two similar cases brought judgments of $10,000.00 and $80,000.00, and he recommended a settlement within those parameters. Defendant initially offered $30,000.00 on a structured settlement. This case was further complicated by another issue. The plaintiff was Black and the case was going to be tried in a predominantly White, conservative county. I acted as co-counsel at the request of Attorney Jeffery Oliveira. The case was eventually settled for $150,000.00. I acted as chief counsel throughout the course of this litigation, including all settlement negotiations.

7) Delores Sneed v. Multi States Transport, and Sean Thornton. LaPorte Circuit Court, Cause No. 47555-C, before the Honorable Robert S. Gettinger. I represented the plaintiff along with Attorney Jeffery Oliveira, 7895 Broadway, Merrillville, Indiana, Tel. (219) 769-3383. Defendant was represented by Attorney James Cheslek of 103 East Lincolnway, Valparaiso, Indiana, 46383, Tel. (219) 464-4961. Mrs. Sneed was employed at Midwest Steel in Portage, Indiana. Because of her intelligence level, the plaintiff could not get another job which paid a salary similar to that which she earned at Midwest Steel. While leaving her job at Midwest Steel, plaintiff was involved in an automobile accident. The accident occurred on the exit road at Midwest Steel at the point where the road forms a "Y". At this point, one fork of the road

following the defendant's truck when he stopped, commenced backing up, and struck the plaintiff. The plaintiff claimed that the defendant had failed to properly turn off the road to the scales and was backing up in order to make this turn. The defendant alleged that the plaintiff ran into the rear of his vehicle. The company's police report cited the plaintiff as contributing to the cause of the accident. As a result of the accident, the plaintiff suffered a herniated disc and was unable to work. Because of her fear of any operation, she refused surgery. Eventually, her treating physician released her to return to work on a trial basis. However, because plaintiff's physician had diagnosed a herniated disc, the company physician would not approve her return to work. I entered my appearance as co-counsel because the defendant had made no offers to settle. I was chief counsel in the case. Issues in the case were the negligence, if any, of the plaintiff, the negligence, if any, of the defendant, and the nature and extent of plaintiff's alleged injuries. The case was settled for $87,500.00.

8) Christine White, Admx. of the Estate of Andrew S. White, Deceased, et al v. R.W. Service System and Robert Tatham. This case was docketed in the United States District Court for the Northern District of Indiana, Hammond Division, Civil No. H81-569, before the Honorable James Moody. Plaintiffs were represented by Attorney Gilbert Gordon, Gordon & Gordon, 180 North LaSalle, Suite 2505, Chicago, Illinois, 60601, and Attorney Paul Giorgi, 5696 Broadway, Merrillville, Indiana, Tel. (219) 887-5227. I represented the defendants. Mr. Andrew S. White was operating his family automobile on the Dan Ryan Expressway, driving from his home in Indiana to his job in Chicago. Accompanying Mr. White were his wife and mother-in-law, who were also going to work. While proceeding north on the Dan Ryan Expressway, plaintiff experienced a flat tire on his vehicle. The plaintiff pulled off the highway to change the tire. While plaintiff was changing the tire, the defendant was proceeding north on the expressway in the outside lane. As he approached the area where plaintiff's vehicle was located, the defendant claimed a "phantom vehicle", also going north in the center lane of the expressway, forced him off the roadway thereby causing him to collide with plaintiff's vehicle. As a result, Andrew S. White was killed and Christine White severely injured. In addition to his wife, he was survived by two children. Issues presented in the lawsuit were the negligence of the plaintiff and the defendant and the nature and extent of the plaintiff's alleged injuries and/or damages. The law of the State of Illinois was controlling, thus imposing a standard of comparative negligence. The plaintiff's original demand was $1,500,000.00. The case was eventually settled for $340,000.00. I was sole counsel for the defendants and handled all discovery and settlement negotiations.

9) William and Diane Sims v. Johnny Pete Cuciurean & CRST. Civil No. H84-791, in the United States District Court for the Northern District of Indiana, Hammond Division, before the Honorable Andrew P. Rodovich, Magistrate. Plaintiffs were represented by Attorneys Louis Casale and Arlington Foley, 8300 Mississippi Street, Merrillville, Indiana, 46410, Tel. (219) 769-1566. I represented all defendants. Defendant, Johnny Pete Cuciurean, was proceeding in an easterly direction on I-94. Because of imminent rain, the defendant stopped off the roadway and covered the load of steel on his truck. After re-entering the roadway and proceeding approximately 3/4 of a mile, he was struck from the rear by the plaintiff. The plaintiff had been proceeding in an easterly direction in the

defendant was traveling too slow for conditions, had his vehicle improperly loaded, and dropped part of the material on his truck, thus causing the collision in question. Defendant alleged that the plaintiff was traveling too fast, failed to keep a lookout, failed to stop or slow his vehicle, and failed to change lanes. As a result of the collision, the plaintiff was pinned in his cab, which eventually caught fire. He had serious and permanent injuries to his lower extremities, third degree burns to 80% of his body, and serious burns and injuries to his testicles. As a result of these injuries, plaintiff was totally disabled. His medical expenses were in excess of $130,000.00. The case was further complicated by the fact that the insurance carrier for the defendants, Carriers Insurance Company, was in liquidation and the Iowa Guaranty Association became involved in the case. The Court ordered all parties, including the Iowa Guaranty Association and the Workmen's Compensation representative to appear at the final Pre-Trial and Settlement Conference. The case was finally settled for $183,000.00.

10) Robert Baxter v. Inland Steel. Civil No. H82-0091, United States District Court for the Northern District of Indiana, Hammond Division. Plaintiff's counsel was William Cunningham, 2637 45th Street, Highland, Indiana, Tel. (219) 924-2427. I represented the defendants along with John McMurray, 19 South LaSalle, Chicago, Illinois, Tel. (312) 580-0700. Robert Baxter was an employee of Inland Steel and worked on the iron ore carrier "Ryerson." During regular maintenance, Mr. Baxter was in the process of changing brake pads on the ship. The accident in question occurred when the ship's overhead crane was lowering a brake pad into position. The crane's cable came loose from the drum and fell on top of Mr. Baxter, injuring him. Mr. Baxter sued pursuant to the Jones Act under Admiralty law. I participated in all discovery and settlement negotiations with my co-counsel, Mr. John McMurray. The case was eventually settled for $50,000.00.

11) USA v. Manuel Aguilera Fragoso and Feliciano Herrera Aguilera. Before the Honorable Philip McNagny in the United States District Court, Northern District of Indiana, Hammond Division under Cause No. HCR 78-8. Assistant U.S. Attorney Richard Hanning (now with the law firm of Eichhorn, Eichhorn & Link. 200 Russell Street, Hammond, Indiana, 46320, Tel. (219) 931-0560) was the prosecuting attorney. I represented the defendant, Manuel Aguilera Fragoso. Manuel Aguilera Fragoso was an alien married to a United States citizen. He and his wife had an infant at the time of his arrest. At the time and place in question, the defendants were accused of transporting a large amount of heroine across state lines for purpose of sale. Immediately after his arrest, defendant, Manuel Aguilera Fragoso, advised the police that he drove the car because he was without money and needed the money to feed his family. He also indicated that he did not know what was in the package, but thought something was illegal because he was promised $300 for the delivery. After the arrest, the police searched the defendant's residence where they found defendant's wife and child with no food except for 1/2 quart of milk. I was appointed pursuant to the Criminal Justice Act. The case was plea bargained on the agreement that the government would make no recommendation. The defendant was eventually sentenced, pursuant to the Youth Offender Act. The co-defendant, represented by other counsel, received a substantially greater sentence.

12) USA v. Andres Sanchez. Before the Honorable Michael

the Assistant U.S. Attorney. Andres Sanchez was laid off from United States Steel. Because he was receiving a minimal income, Mr. Sanchez was having a problem making ends meet. The Zambrana family was heavily involved in dealing with various drugs, including, but not limited to, marijuana, heroine, and cocaine. The Zambrana family talked Mr. Sanchez into "storing" some of their drugs in his basement and occasionally used him to make some deliveries for them. From time to time they would give him a minimal amount of money, such as $20, for making deliveries. As a result of a phone tap on the Zambrana family, the Government learned of Mr. Sanchez's involvement. Mr. Sanchez was one of many people indicted. I was requested by another attorney to be co-counsel and represent Mr. Sanchez, who did not speak English. A plea bargain was eventually reached with the Government. If the defendant cooperated with the Government, the Government would not recommend a sentence to the Court and the defendant would not be sentenced to more than four (4) years in prison. I participated as chief counsel in all aspects of the case; I represented the defendant in the numerous trials involving other defendants at which he testified, and in those instances when he gave statements to the DEA and the U.S. Attorney. As a result of the defendant's cooperation, the Government was able to break the Zambrana telephone codes in which the terms "eggs", "apples", and "oranges" would refer to such things as marijuana, cocaine and heroine. The testimony of defendant, Andres Sanchez, played a major role in the indictments and convictions of numerous other defendants. Prior to testifying, Mr. Sanchez received several calls threatening his life or the lives of his family. On one occasion, shots were fired at the Sanchez home. Counsel for one of the co-defendants, who had also turned government witness, allegedly had his office windows shot out. This prompted the Federal Judge and the U.S. Attorney to offer Mr. Sanchez the "Witness Protection Program", which he refused because he did not want to isolate himself from the rest of his family. As a result of his cooperation, Mr. Sanchez received no jail time but, instead, was placed on probation.

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am a shareholder in and an employee of Spangler, Jennings, Spangler & Dougherty, P.C., 8396 Mississippi Street, Merrillville, Indiana, 46410. Many of the cases presently being handled by the law firm will not be billed, settled, or determined until a future date. My income from my law firm will be made up partially from these monies.

Lake County Trust #2409. (Approximately 80 acres of farm land, together with residence.) I am a part-owner together with some of my law partners. Future rents and income from crops are expected to be collected.

Lake County Trust No. 2851. (Office building located at 8396 Mississippi Street, Merrillville, Indiana.) I am part-owner with other individuals who include, but are not limited to, some of my law partners. Future rents are expected to be collected, which may result in distribution of profits.

Langelier One Park Avenue Associates, P.O. Box 10043, New York City, New York, 10249. Limited Partnership. Cash distributions may be received annually until the investment is sold. Further, the investment might be re-financed yielding cash distribution to limited partners.

Efron II Investors, 5246 Hohman Avenue, Hammond, Indiana, 46320. Limited Partnership. Cash distributions may be received yearly until the investment is sold.

Efron III Investors, 5246 Hohman Avenue, Hammond, Indiana, 46320. Limited Partnership. Cash distribution may be received yearly until the investment is sold.

My wife owns two (2) shares of Northern Indiana Public Service Company stock. The stock may pay dividends in the future.

I have an IRA with A.G. Edwards & Company, 8300 Mississippi Street, Merrillville, Indiana, 46410, consisting of stocks, bonds or mutuals. The account accumulated, and is expected to accumulate, interest and other funds yearly.

My wife has an IRA account with Indiana Federal Savings & Loan Association, Washington at Lincolnway, Valparaiso, Indiana.

My wife has an IRA account with Robert W. Baird & Company, 970 Mill Pond Road, Suite B, Valparaiso, Indiana 46383. The firm has purchased stocks and other investments for the account.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

With respect to my law firm, I will resign and divest myself of any interest. Because of a restrictive stock agreement, a "buy-out" will be accomplished within thirty (30) days. Thereafter, I plan to recuse myself from any litigation involving Spangler, Jennings, Spangler & Dougherty, P.C., for a period of three (3) years. I will do further investigation to determine if I should recuse myself for a longer period. After three (3) years, I will automatically recuse myself from any case involving the Spangler firm which was in the law office prior to my departure. Further decisions on recusal from cases involving the Spangler firm will be made on a case-by-case basis.

Insofar as my vested pension in the law firm, I will withdraw it and roll it over to my IRA account.

I will divest myself of my interest in Lake County Trust Nos. 2409 and 2851. I will attempt to reach an agreeable price for my interest with my partners and conclude that sale within thirty (30) days of departure from my law firm. If an agreeable price cannot be reached, I will attempt to sell those assets to outside parties at the earliest date possible.

I will divest myself of my interest in the Transportation and Products Liability Legal Directory. I do not feel there is any value to it since it is no longer published. Moreover, I have been told that it is no longer a viable entity. However, I will verify this and proceed as stated above.

Insofar as my limited partnerships are concerned, I will recuse myself from any litigation involving the limited partnerships or any of the general partners of the limited partnerships.

The minimal number of shares of stock my wife owns in Northern Indiana Public Service Company will be sold immediately upon confirmation.

I will be guided by the Judicial Code of Conduct for United States Judges and advice from other Federal Judges regarding the investments of IRA accounts of myself and my wife, and what I should do insofar as life insurance policies.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar

here (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

Financial Disclosure Report is attached hereto.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Same are attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, **listing specific instances and the amount of time devoted to each**.

From the beginning of my law career I have given consultations to disadvantaged people by phone or in person. It is difficult to give specifics because, in most cases, this involved short visits with no file being opened. On occasion, I have had people referred to my office by the Legal Aid Society. Some of these cases involved only direction or advice and others were more complex. However, it is impossible to give specific names because of the numerous cases I have handled.

The now retired Catholic Bishop of the Diocese of Gary, Andrew Grutka, appointed me to serve on the Gary Diocese School Commission for two (2) terms. I received no compensation. This helped many disadvantaged children from a large mix of nationalities and religions get a good education from parochial schools.

In the early 1970's, I met with a number of citizens from East Chicago, Indiana and the Priest from Our Lady of Guadalupe Roman Catholic Church in that city to launch a program to help disadvantaged people obtain middle-class homes at prices and on terms they could afford. We were able to get Inland Steel to sell a large tract of land for significantly below market value. We were also able to obtain the City's cooperation in our venture and had numerous contractors bid to build homes at affordable prices. The project concluded by having a subdivision constructed in East Chicago consisting of middle-class homes. Families of all nationalities purchased these homes at prices that I would estimate were approximately 1/3 below retail market value and on reasonable financial terms. Naturally, all of the homes were sold in a very short time. I attended numerous initial meetings to help get the project underway. As attorneys from the City of East Chicago, Inland Steel, and the contractors became more involved, my participation in the venture decreased. I did not charge for, nor did I receive, any compensation for my time.

In 1975 I represented Clifford Thielen in the Lake Superior Court, Criminal Division, Cause No. 4CR-116-575-419. This case, was tried before a jury, on October 20, 1975. Judge James Clements presided. Clifford Thien was charged with reckless homicide of a 13 year old girl. The trial last one week. I was paid $75.00, which did not even cover expenses in the case.

Throughout my career I have represented a number of criminal defendants pursuant to the Criminal Justice Act before the Federal District Court. Although the government does give some compensation, the hourly rate is substantially below the amount normally charged. There was also a cap as to what time spent at the "fixed" rate was substantially more than the cap amount. I have never requested additional fees above the cap amount. Some of the cases I handled, pursuant to the Criminal Justice Act were:

USA v. William Everett Baity - sawed off shotgun with no serial number; Criminal No. 72 HCR 98, United States District Court for the Northern District of Indiana, Hammond Division.

USA v. Hugh Battle - sawed off shotgun with no serial number; Criminal No. HCR 75-10, United States District Court for the Northern District of Indiana, Hammond Division.

USA v. Manuel Aguilera Fragoso - Illegal possession and transportation of drugs; Criminal No. HCR 78-8, United States District Court for the Northern District of Indiana, Hammond Division.

I recently represented Andres Sanchez in the United States District Court for the Northern District of Indiana. Mr. Sanchez's case has been discussed above. I was compensated by Mr. Sanchez pursuant to an agreed fee. During the handling of Mr. Sanchez's case it was learned that the DEA agents confiscated substantial amounts of monies during their search of the defendant's home. The government filed pleadings to forfeit the monies found in the Sanchez home. Most of the money belonged to the Zambrana family. However, approximately $5,000.00 belonged to Mrs. Sanchez. This money was being saved for "a rainy day" and/or a family vacation to Puerto Rico. I was able to get the government to withdraw their request to forfeit this portion of the money confiscated and had that money returned to Mrs. Sanchez. Although the family agreed to pay me if I could get the money returned, I did not charge, nor did I receive, any compensation for these services.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, **or have you belonged,** to any organization which discriminates **-- through either formal membership requirements or the practical implementation of membership policies?** If so, list, with dates of membership. **What have you done to try to change these policies?**

I do not now, nor have I ever, belonged to any organization that practices discrimination against any nationality, race, sex, or religious group.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

On May 15, 1987, I submitted a request for an Application for the vacancy in the United States District Court For the Northern District of Indiana, part of June, 1987, I was advised by a member of the Merit Selection Committee that the field of twenty-three (23) applicants had been cut to ten (10) and that I was in that group of ten (10) finalists. I was then advised that I would be personally interviewed by the Merit Selection Committee on July 7, 1987. At no time prior to this interview did I have any personal contact with any member of the Merit Selection Committee with the exception of a telephone call to the Chairman. During this telephone call, I inquired as to whether there existed guidelines regarding the selection procedure. I did this because I had previously heard conflicting stories from fellow attorneys as to what an applicant should do. I asked the Chairman whether individual, personal communication with members of the Selection Committee was proper and whether the Committee wanted letters of recommendation. I was advised that personal contact would be improper and that limited letters of recommendation would be acceptable. Accordingly, I made no contact with any member of said Committee, but had some letters of recommendation forwarded to the Committee.

On July 7, 1987, I had a twenty (20) minute interview with the Merit Selection Committee. I later learned that the Merit Selection Committee reduced the number of applicants to three (3) and that I was among the three (3) remaining applicants. I do not know if the Merit Selection Committee rated or ranked the three (3) applicants.

On August 6, 1987, I was interviewed by the Justice Department in Washington, D.C. The interview consisted of four (4) different conferences with members of the Justice Department. Each conference lasted approximately one (1) hour.

On September 8, 1987 I met with and was interviewed by the FBI. Thereafter, on September 15, 1987, I forwarded responses to the Personal Data Questionnaire submitted by the Justice Department to that office and the American Bar Association.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.**

   No.

5. Please discuss your views on the following criticism involving "judicial activism."

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The controversy regarding the role of the federal judiciary has existed since Chief Justice John Marshall wrote the decision in Marbury v. Madison in 1803. It was in that case that the Supreme Court, for the first time, exercised the power of judicial review of an act of Congress. Since the decision in Marbury v. Madison, the Supreme Court has declared approximately 85 acts of Congress unconstitutional, a small number in relation to the time span in question. The reason judicial review has survived and prospered is due to the support the federal courts have received from the American people and because of various constitutional and judicially created limitations.

> In short, judicial self-restraint and judicial power seem to be the opposite sides of the same coin; it has been by judicious application of the former that the latter has been maintained. A tradition beginning with Marshall's coup in Marbury v. Madison . . . suggests that the Court's power has been maintained by a wise refusal to employ it in unequal combat.

John P. Roche "Judicial Self-Restraint", American Political Science Review, Vol. 49 (Sept. 1955) p. 722.

In addition to the refusal to render decisions on constitutional questions unless absolutely necessary in order to decide the case, the Supreme Court has placed the following limitations on itself and the lower federal courts:

(1) The exercise of the power of judicial review only if an actual case or controversy is presented;
(2) Not deciding "political question" cases which require resolution by the executive or legislative branches;
(3) Applying the rule of stare decisis;
(4) Avoid ruling on a case on constitutional grounds where there is present some other ground on which the case may be disposed;
(5) Applying the presumption of law that a statute is constitutional unless the opposite is clearly demonstrated;
(6) Confirming that the individual party presenting a case has standing to challenge the constitutionality of a law which is directly affecting his personal rights, and not on behalf of

to the Supreme Court in the early 1950's, controversy again arose as to the proper role of the federal judiciary in reviewing state and federal laws and the impact of the high court's decisions in the areas of civil rights, criminal procedure and labor. From 1953 until 1969, the Warren Court shifted the focus of judicial review from the corporate and administrative law issues of the Vinson Court of prior years, to cases involving the protection of individual liberties. In the period from 1953 to 1962, the justices were often divided into two blocs. The acknowleged leader of the civil libertarians was Justice Black, supported by Justices Brennan, Douglas, and Chief Justice Warren. These "judicial activists" as they came to be called, believed that the Supreme Court must play a positive role in the protection of individual liberties. They sought to promote social welfare and to protect American freedom from erosion by partisan legislative bodies and executive officers. Justice Felix Frankfurter headed another bloc on the Court that advocated a policy of "judicial self-restraint." He and his supporters believed that the primary responsibility for governing lies with the people and their duly elected officers. They felt that the Court must take a back seat to legislative bodies lest the freedom of the people to govern themselves be hampered by "judicial legislation." Justice Frankfurter was usually supported by Justices Harlan, Stewart, Whittaker and Clark. In subsequent years, upon the retirement of Justices Frankfurter, Whittaker, Goldberg and Clark, and the appointment of Justices Abe Fortas and Thurgood Marshall, the patterns of alliances between the two blocs have constantly, if not consistently, changed. Rocco J. Tresolini and Martin Shapiro, American Constitutional Law, 3rd Ed., (The MacMillan Company 1970), pp. 67-70, 807-808.

Upon the retirement of Chief Justice Warren and the appointment of Chief Justice Warren Burger, from 1969 through 1986, the Supreme Court has become more unified and conservative in the exercise of judicial power.

The vast majority of federal cases are reviewed and resolved by the federal district courts without further appeal. As a result, district court judges are responsible for interpreting and applying the decisions of the federal appellate courts on a day-to-day, case-by-case basis. In more recent years, social criticism has been directed against a very few federal judges who have, arguably, tipped the balance between "judicial self-restraint" and "judicial activism" in using a particular case then presented to them as a platform for political discussion or social change, thereby running rough-shod over those specific limitations on judicial power set out in the Constitution and in prior Supreme Court decisions. The acts of a few should not be seen as indicative of conduct by the whole.

The term "judicial activism" must be understood in its historical context; not used as a rallying cry presided over his court room in a manner which did honor to the tradition of the federal judicial system. Never have I had a federal judge decide a case for reasons other than the case's own substantive merits or procedural posture. At the same time, never have I come across a federal judge who has backed down from making a decision on the merits of a case which may have gone against his personal feelings or opinions of the matters at issue. Nor have I ever practiced before a federal judge who has declined to take hold of his case docket and administer the cases before him in the most fair, impartial, efficient and economical way possible. Certainly, the term "judicial activism" was not intended, nor in fairness can it now be used by social commentators or others, whether on behalf of the executive or legislative branches, to rein in the Constitutionally sanctioned independence with which federal judges must work. This, in my opinion, is the proper role of a federal district court judge. These are the ranks of men and women jurists I wish to join.

I, RODOLFO LOZANO, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

RODOLFO LOZANO

STATE OF INDIANA)
) ss
COUNTY OF LAKE)

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, this 18th day of December, 1987.

My Commission Expires:
Oct. 13, 1989

Martha Powell Baker
Notary Public

County of Residence: Lake

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form A
OMB N

Reporting Status *(Check Appropriate Box)* ☐ Incumbent	☒ New Entrant, Nominee, or Candidate ☐ Termination Filer	Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)* Nomination December 2, 1987	Termination *(Month, Day*
Reporting Individual's Name	Last Name LOZANO	First Name and Middle Initial RODOLFO			
Position for Which Filing	Title of Position District Judge U.S. District Court	Department or Agency *(If Applicable)* N/A			
Location of Present Office	Address *(Number, Street, City, State and ZIP Code)* 8396 Mississippi Street Merrillville, IN 46410	Telephone No. *(Include Area Code)* (219) 769-2323			
Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held None				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Judicial Ethics Committee	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☐ No			
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual	Date *(Month, Day, Year)* 12-8-87			
Other Review **(If desired by agency)**	Signature of Other Reviewer	Date *(Month, Day, Year)*			
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*			
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*			

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued

Reporting Periods

Incumbents: Complete Schedules A, B, C
reporting period is the preceding calendar
II of Schedule C and Part I of Schedule D
include any positions held or agreements or
from the beginning of the filing year until

Termination Filers: Complete Schedules
of D. The reporting period begins at the e
ered by your previous filing and ends at the

Nominees, New Entrants and Candidate
Vice President: Complete Schedules A, C
do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Inc
Transactions Test (BLOCK D) is the prec
and the current calendar year up to the
assets in BLOCK B as of any date you c
31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The rep
preceding calendar year and the current
any date you choose that is within 31 days
- **Schedule C, Part II** (Agreements and Arr
any agreements or arrangements as of
- **Schedule D**—The reporting period is
calendar years and the current calendar
of filing.

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FPM Chapter 734
U.S. Office of Personnel Management

Reporting Individual's Name	Assets and Income	Page Number
Rodolfo Lozano		

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbent
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item durin
for a value

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Da (Mo., Da Only Hono
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000		
Examples:	X Y Z Common				x				x									x							
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000	
1	Spangler, Jennings, Spangler & Dougherty, P.C.	x													salary								x	$275,000	
2	Individual Retirement Account					x			x		x	x								x					
3 S	Individual Retirement Account			x					x		x	x							x						
4	Employer Retirement Plan				x				x		x	x							x						
5	Effron II - Limited Ptnrshp Real Estate Ptnrshp, Hammond, Indiana				x										ptnrshp income	x									
6	Effron III-Limited Ptnrshp Real Estate Ptnrshp, Hammond, Indiana					x									ptnrshp income	x									
7	Langelier/One Park Avenue Tax Shelter, Boston, Mass.					x									ptnrshp income	x									
8	Trust #2851-Partner, Real Estate Ptnrshp, Merrillville, Indiana					x									ptnrshp income	x									
9	Trust #2409-Partner, Firm Ptnrshp, Merrillville, IN			x											ptnrshp income									1,868	
10	Spangler, Jennings, Spangler & Dougherty, P.C. - Common Stock		x												ptnrshp income	x									

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Rodolfo Lozano

Attachment to Financial Disclosure Report

Assets & Income

Page 2A

Assets & Income Sources	Valuation As of 12/1/87	Income Type	Amount
MCI Communications - Common	- 0 -	Capital Gain	604.00
Toth Aluminum - Common	- 0 -	Capital Gain	3,831.00
Indiana Banc - Common	- 0 -	Capital Gain	11,197.00
			15,632.00

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Reporting Individual's Name
Rodolfo Lozano

N/A
Not Incumbent
Not Termination Filer

Page Number

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

S or DC		Identification of Assets	Type of Transaction (X)				Am	
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001-$5,000	$5,001
	Example:	X Y Z Common	X			2/1/83		
1								
2								
3								
4								
5								
6								

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☐

S		Source *(Name and Address)*	Brief Description
	Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president
1			
2			
3			
4			
5			
6			

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U.S. Office of Personnel Management

Reporting Individual's Name
Rodolfo Lozano

Page Number

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabi ties owed to relatives. See instructions for revolving charge accounts.

NONE ☐

S or DC		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of $10,001 to $15,000	$15,001 to $50,000
	Examples	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X	
1		Gainer Bank, Merrillville, Indiana	Renewable Commercial Notes-Unsecured	1986	Pr+2	90dys		
2		Bank One, Merrillville, Indiana	See Attached					x
3		Effron Investors, III, Hammond, Indiana	Unsecured Term Loan	1983	10%	4yrs		x
4		Transamerica Life Insurance Company Los Angeles, California	Policy Loans	1986-1987	7.4%	N/A		x
5		Marine Midland Bank, New York, NY	Promissory Note	1985	13%	4yrs		
6								

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

	Status and Terms of any Agreement or Arrangement	Parties
Example	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA
	Pursuant to agreement with the law firm, I am to receive $100.00 per hsare for approximately 34 shares of common stock, at time of resignation.	Spangler, Jennings, Spangler & Dougherty P.C. - Merrillville, Indiana

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Rodolfo Lozano

Part 2 - Liabilities Schedule C

Bank One			
Renewable Unsecured	3-87	pr + 1.5	90 days
Commercial Consumer Loan	11-86	8.5%	90 days
Term Loan due 6-88	7-83	10.75%	5 years
Twin account checking	7-80	17.9%	N/A

To the best of my knowledge, there are debts owed to Bank One by Spangler, Jennings, Spangler & Dougherty, a Professional Corporation and by some of the partnerships to which I belong. I do not believe I have any personal responsibility on any of these notes.

I have been advised by Bank One that upon my disposing of these assets, they will agree to strike my name in the event my personal guaranty exists.

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Reporting Individual's Name
Rodolfo Lozano

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Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75
	Spangler, Jennings, Spangler & Dougherty, P.C. Merrillville, Indiana	Law Firm	Shareholder	2-78
	Gough/Spangler Building Partnership- Trust #2851 Merrillville, Indiana	Building Partnership	General Partner	6-79
	Trust #2409 Merrillville, Indiana	Farm Partnership	General Partner	10-76
	Effron Investors - II, Hammond, Indiana	Real Estate Partnership	Limited Partnership	6-82
	Effron Investors -III, Hammond, Indiana	Real Estate Partnership	Limited Partnership	10-83
	Langelier/One Park Avenue, Boston, Massachusetts Assoc. Limited Partnership	Tax Shelter	Limited Partnership	7-85

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	*Rockwood Insurance Company, Indianapolis, Indiana	Legal Services
	*State Farm Mutual Automobile Insurance Company Griffith, Indiana	Legal Services
	American States Insurance Company, Highland, Indiana *	Legal Services
	St. Paul Fire & Marine Insurance Companies South Bend, Indiana*	Legal Services
	Ohio Casualty Insurance Company, South Bend, Indiana*	Legal Services
	Economy Fire & Casualty Company, Freeport, Illinois*	Legal Services

*Clients of Spangler, Jen
& Dougherty, P.C.

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[illegible] Chapter [illegible]
U.S. Office of Personnel Management

Reporting Individual's Name
Rodolfo Lozano

Page Number

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or politic entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Y
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non profit education	President	6/82
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75
	Spangler, Jennings, Spangler & Dougherty Merrillville, Indiana	Law Partnership	Partner	2/75
	Products Liability & Transportation Legal Directory	Legal Directory Partnership	Partner	1/82

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	Inland Steel Company, Chicago, Illinois*	Legal Services
	Carriers Insurance Company, Des Moines, Iowa*	Legal Services
	Continental Insurance Company, South Bend, Indiana*	Legal Services
	Andres Sanchez, Gary, Indiana*	Legal Services
	Alice Gross, Gary, Indiana*	Legal Services
	Delores Sneed Gary, Indiana*	

*All clients of Spangler, Je
Spangler & Dougherty, P.C.

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U.S. Office of Personnel Management

Reporting Individual's Name

Rodolfo Lozano

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Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or politic entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Y
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000 You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	Steve J. Symons, Lowell, Indiana*	Legal Services
	Michael W. Miller, Lowell, Indiana*	Legal Services
		*Clients of Spangl
		Spangler & Dougher

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FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks		2	000
U.S. Government securities—add schedule			
Listed securities—add schedule			24
Unlisted securities—add schedule			
Accounts and notes receivable:			
Due from relatives and friends			
Due from others			
Doubtful			
Real estate owned—add schedule		325	000
Real estate mortgages receivable			
Autos and other personal property		183	000
Cash value—life insurance		38	800
Other assets—itemize:			
Paintings		108	050
Retirement Plan		125	000
Partnership Interest		320	000
Stock - Law Firm		3	400
Total assets	1	105	274

LIABILITIES			
Notes payable to banks—secured		44	500
Notes payable to banks—unsecured		29	700
Notes payable to relatives			
Notes payable to others			
Accounts and bills due		15	000
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule		45	000
Chattel mortgages and other liens payable			
Other debts—itemize:			
Real Estate Partnership		40	000
Life Insurance Loans		20	800
Total liabilities		195	000
Net worth		910	274
Total liabilities and net worth	1	105	274

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	no		
On leases or contracts	no		
Legal Claims	no		
Provision for Federal Income Tax	no		
Other special debt	no		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	Attached		
Are you defendant in any suits or legal actions?	no		
Have you ever taken bankruptcy?	no		

RODOLFO LOZANO

Attachment to Personal Financial Statement

Real Estate Owned

Personal Residence	225,000
Cottage & Land	100,000
	325,000

Partnership Interest

Efron II - Amount paid in cash	50,000
Efron III-Amount paid in cash	100,000
Langelier - One Park Avenue Cash & Note	95,000
Trust #2851 - Fair Market Value	60,000
Trust #2409 - Fair Market Value	15,000
	320,000

Real Estate Mortgages Payable

Home Mortgage - Gainer Bank	27,500
Secondary Residence - Contract	9,500
- 1st America Bank	8,000
	45,000

Loans - Life Insurance

Transamerica	20,800

Assets Pledged

Personal Residence
Secondary Residence
Automobile & Van
Insurance Policies

FINE ARTS SCHEDULE

		Value
1.	COSMIC MEDITATION by Nieman	$ 425.00
2.	GROWING TOGETHER by Vickers	$ 200.00
3.	CAFE SCENE by Liken	$ 395.00
4.	BACK YARD IV by Kitpniss	$ 695.00
5.	TORREADOR by Nieman	$ 3,500.00
6.	JUNGLE by Liken	$ 395.00
7.	TEACHER by Rockwell	$ 1,500.00
8.	HILLSIDE PATH by Kitpniss	$ 150.00
9.	INDIANA by Maker	$ 250.00
10.	STILL LIFE V by Duv	$ 125.00
11.	HARBOR by Campario	$ 100.00
12.	WINDSWEPT by Kitpniss	$ 275.00
13.	THE JOURNEY by Dali	$ 195.00
14.	COMPOSITION by Miro	$ 85.00
15.	FLORAL by Flora	$ 225.00
16.	RACHEL & DEBBIE by Liberman	$ 300.00
17.	PORTRAIT by Emy	$ 35.00
18.	OIL PAINTING by Farman	$ 100.00
19.	RECTOSPECTIVE by Dali	$ 9,000.00
20.	ESCULATOR by Miro	$ 2,900.00
21.	PAPILLINS SUITE by Dali	$ 4,800.00
22.	SALVADOR DALI TRIOMPHE del'amour	$ 1,350.00
23.	Dali Sculpture DON QUIXOTE, Bronze Patine with special book by Dali (illustrated) of Don Quixote	$ 5,200.00
24.	[illegible]	

25.	THE INVISIBLE AFGAN by Dali	$ 7,000.00
26.	DON ZUINOTE by Salvador Dali	$ 2,100.00
27.	One set of 5 lithographs entitled "5 PIECES OF CARMEN" by Alvar	$ 6,250.00
28.	DEUX VILLAGES by Alvar (2 pieces)	$ 3,800.00
29.	Lithograph by Andrew Wyatt BEAUTY MARK	$ 8,000.00
30.	Angel Botello "LZ" 28/50	$ 2,100.00
31.	LA TABLE DE DEMAIN by Alvar	$ 2,600.00
32.	SOLAR FLAME by Nierman	$ 3,000.00
33.	FIRE BIRD by Nierman	$ 6,000.00
34.	DIVINE COMEDY SUITE by Dali	$31,000.00
	FINE ARTS TOTAL	108,050.00

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
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1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

December 30, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: RUDOLFO LOZANO
United States District Court
for the Northern District of Indiana

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Rudolfo Lozano for appointment as Judge of the United States District Court for the Northern District of Indiana.

Our Committee is of the unanimous opinion that Mr. Lozano is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

STEPHEN M. REASONER

Birth:	May 7, 1944	Houston, Texas
Legal Residence:	Arkansas	
Marital Status:	Married	Susan Dill Hutton 1 child
Education:	1962 - 1966	University of Arkansas B.A. degree
	1966 - 1969	University of Arkansas Law School J.D. degree
Bar:	1969	Arkansas
Experience:	1969 - present	Barrett, Wheatley, Smith & Deacon Associate (1969 - 1973) Partner
Office:	301 W. Washington (P. O. Box 4057) Jonesboro, Arkansas 72403 501 932-6694	
Home:	2912 Clearwood Cove Jonesboro, Arkansas 72401	

To be United States District Judge for the Eastern District of Arkansas

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Stephen Mathew Reasoner

2. Address: List current place of residence and office address(es).

   Resident - 2912 Clearwood Cove
   Jonesboro, Arkansas 72401

   Mailing - Post Office Box 4057
   Jonesboro, Arkansas 72403-4057

3. Date and place of birth.

   May 7, 1944
   St. Joseph's Hospital, Houston, Texas

4. Marital Status (including maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

   Married since July 6, 1968, to former Susan Dill Hutton

   1983 - 1985 Arkansas State University Saudi Customs Project

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   University of Arkansas, Fayetteville, Arkansas
   Bachelor of Arts with major in economics, 1966
   Juris Doctor, with honors, 1969

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

I became an associate with Barrett, Wheatley, Smith & Deacon, June, 1969. I became a partner with the firm on January 1, 1973. In 1982, the structure of the law firm was changed to a professional association and I became a principal in the firm. I have never practiced law other than in association with this law firm or had any other post-graduate employment.

7. Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

United States Army Reserve
318th Military Intelligence Detachment
Jonesboro, Arkansas
Spec. 4th Class
457-82-9691
Honorably discharged 1973

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

1961-62	National Honor Society
1962	Salutorian, Dickinson High School graduating class of 1962
1963-66	Dean's List (each semester) University of Arkansas, Fayetteville, Arkansas
1966-69	Dean's List (each semester) University of Arkansas, Fayetteville, Arkansas
1960-65	Omicron Delta Kappa, honorary fraternity University of Arkansas, Fayetteville, Arkansas
1968-69	Editor-in-Chief, Arkansas Law Review
1969	Phi Alpha Delta Law Fraternity, Outstanding Scholastic Achievement Award (Awarded for graduating first in class)

9. Bar Association: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Craighead County Bar Association, 1969 to present
    1980-81 Secretary/Treasurer
    1982-83 Vice President
    1983-84 President

Arkansas Bar Association, 1969 to present
    1984-87 House of Delegates
    1984-87 Executive Council
    Presently member of Long-Range Planning Committee

Arkansas Bar Foundation, 1979 to present
    1985 to present Board of Trustees

American Bar Association, 1969 to present

American Counsel Association, 1978 to present

Commercial Law League, 1980 to present--member

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Arkansas Law Review Board Member

1973 to present	Member
1978 to present	President

Craighead County-Jonesboro Public Library

1972 to present	Board of Trustees
1984 to present	Chairman

St. Mark's Episcopal Church, Jonesboro, Arkansas

1969 to present	Member
1976-1979	Vestryman
1979	Senior Warden

Jonesboro Chamber of Commerce

1970 to present	Member
1981-84	Board of Directors

Abilities Unlimited (Sheltered Workshop)

1974-81	Board of Directors

Aircraft Owners & Pilots Association

1980 to present	Member

Sigma Phi Epsilon Social Fraternity:

Arkansas Alpha Chapter - University of Arkansas
Secretary - 1964
President - 1965-1966
Chaplain - 1965

Arkansas Gamma Chapter - Arkansas State University
Alumni Advisor - 1975-1984
Alumni Board President - 1984-1987

Elks Lodge #498
Jonesboro, Arkansas

Ancient Free & Accepted Masons of Texas Lodge 1324
Dickinson, Texas

Omicron Delta Kappa honorary fraternity
University of Arkansas
Fayetteville, Arkansas

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admissions and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Arkansas Supreme Court, 1969
United States District Court for the Eastern District of Arkansas, 1969
United States Court of Appeals for the Eighth Circuit, 1974

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

See attached for case notes in Arkansas Law Review.

13. Health: What is the present status of your health? List the date of your last physical.

Good. I take Zyloprim daily to control uric acid and Nomadyne to control slightly elevated blood pressure. Every year I have a check up with L. L. Hoaglin, M.D. The last was June 5, 1987. Also, I had a physical for this position from Ray Hall, M.D., this fall.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

    I have never held judicial office.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

    N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

    (1) Board of Trustees of the Craighead County-Jonesboro Public Library since 1972; chairman of the board since 1984.

    (2) Craighead County Republican Committee.

17. Legal Career:

    a. Describe chronologically your law practice and experience after graduation from law school including:

        1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

        2. whether you practiced alone, and if so, the addresses and dates;

        3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

I became an associate with Barrett, Wheatley, Smith & Deacon, June, 1969. I became a partner with the firm on January 1, 1973. In 1982, the structure of the law firm was changed to a professional association and I became a principal in the firm. I have never practiced law other than in association with this law firm. I have regularly appeared in state and federal trial and appellate courts since 1970, trying jury and non-jury cases.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

During the first five or six years of my practice, I attempted to concentrate mainly on real estate and banking, not thinking that I would enjoy trial work. However, the banking matters frequently led to contested foreclosure proceedings, and the real estate practice led to a great deal of equity trial practice (boundary line disputes, future interests, quiet title, etc.). By the mid 1970's I was consciously attempting to build a practice centered around commercial litigation (product warranty, breach of contract, creditors' rights, lender liability, construction and architect liability, etc.). All during my practice I have handled most, if not all, cases in the office involving employment discrimination (Title VII of the Civil Rights Act of 1964) and civil rights defense (42 USCA §1981, 1983, 1985, and 14th Amendment).

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clientele can be described as establishment--financial institutions, insurance companies, business and governmental entities and their officials. Almost all representation of individuals is done as a personal pro bono practice. I attempt to have a specialty in Title VII and civil rights cases, commercial and contract litigation, and creditors' rights.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appear regularly in federal and state courts. The frequency of my appearance during the past five years is probably 30 to 40% more than the previous years, but my appearance in court has always been regular.

2. What percentage of these appearances was in:
   (a) federal courts..........44%
   (b) state courts of record..56%
   (c) other courts............0%

3. What percentage of your litigation was:
   (a) civil.................100%
   (b) criminal.................0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Sole counsel..................21
Chief counsel.................10
Associate counsel..............5
36

5. What percentage of these trials was:
   (a) jury....................28%
   (b) non-jury................72%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

A. Delta Rice Mill v. General Foods Corp., a Federal Court jury trial. Our firm represented the defendant General Foods Corporation. General Foods rejected 10 boxcar loads of rice graded by the United States Department of Agriculture Grain Inspection Service as being USDA #1 long-grain rice. General Foods claimed (1) the rice did not meet USDA #1 standards, and (2) even if it did, it did not meet additional General Foods specifications for Minute rice, for which the rice was to be used. Delta Rice Mill claimed that the rice did meet specifications and there was a breach of contract by the rejection. Additionally, Delta Rice Mill claimed that the breach was made in bad faith and it caused its main creditor to revoke its line of credit therefor destroying the business and forcing the rice mill to shut down for which Delta Rice Mill claimed consequential and punitive damages. The jury awarded contract, consequential and punitive damages; however, on motion for judgment notwithstanding verdict, the trial court set aside the consequential and punitive damages which totaled over three-quarters of a million dollars (583 F.Supp. 564). On appeal, the trial court was affirmed (See 763 F.2d 1001). I conducted all of the pre-trial discovery and was co-counsel with my law partner, J.C. Deacon, at trial. I was chief counsel on the post-trial motions for judgment n.o.v. and on appeal. This was the first case in Arkansas in which the doctrine of bad faith breach, previously applicable to insurance cases, was attempted to be applied to commercial contract negotiated at arms length. In granting the n.o.v. and in its affirmance, the trial court and the Eighth Circuit Court of Appeals held that the cases did not indicate Arkansas would expand the doctrine of bad faith breach recognized in the case of Aetna v. Broadways Arms, 664 SW2d 463 (Ark. 1984) to ordinary commercial contracts. Additionally, since Delta Rice Mill was formed by a group of local rice farmers, the case had a great deal of local and even state-wide interest. The case was tried during the first week of November, 1983, in the United States District Court for the Eastern District of Arkansas, Jonesboro Division, the Honorable George Howard, Jr., presiding. Delta Rice Mill was represented by Herbert C. Rule, III, Esq., Rose Law Firm, 120 West Fourth Street, Little Rock, 501-375-9131.

B. Tedder v. Greene County Tech, a Federal Court jury trial. Our firm represented the Greene County Tech School District, the individual members of the School Board, and the Superintendent of Schools. The State of Arkansas, as part of an overall education package, instituted a teacher competency test. The plaintiff, Sandra Tedder, was an activist teacher who was very much opposed to the test and led an attempted, but ultimately unsuccessful, boycott of the test. Since her teaching certificate, which must be renewed every ten years, was up for renewal, the school board took the position that she had effectively quit her job and her contract was not renewed. Mrs. Tedder was a tenured teacher and could only have been dismissed for cause and would have been entitled to a hearing before any dismissal was done under state law. She claimed that she was in effect fired and was entitled to the procedural due process which she, admittedly, did not receive. Also, she claimed that the actions of the school board's superintendent were motivated by a desire to punish her for exercise of her First Amendment rights. Additionally, the plaintiff claimed that she requested the superintendent, at a later date, to obtain an alternate test date for her, a claim that was denied by the superintendent. Picking a jury in the case was difficult because the teacher-testing issue was one with a lot of emotion on both sides. A great many jurors were excused and the case, which was originally to be tried to a 12 person jury, was tried to a 6 person jury because of the number of persons excused. A jury verdict was rendered in favor of the defendant school district and individuals. The case was of interest because of the great amount of debate which had preceded it regarding the issue of teacher testing over which the governor and the Arkansas Education Association had been in conflict for some time. Legally, there was an interesting issue as to whether a person, undoubtedly entitled to a hearing before involuntary dismissal for cause, can take such actions as to create a jury issue as to whether she effectively voluntarily quit her employment. I was sole counsel for the defendants at trial. The case was tried on May 13 and 14, 1987, in the United States District Court for the Eastern District of Arkansas, Jonesboro Division, the Honorable William R. Overton, Jr. (deceased) presiding. Sandra Tedder was represented by Richard Rochell, Esq. and Clayton Blackstock, Esq. of Mitchell and Rochell, P. O. Box 1510, Little Rock, AR 72203, 501-378-7870.

C. Lee Pump v. Jones & Laughlin, a Federal Court non-jury trial. Our firm represented the defendant Jones & Laughlin Steel Corporation. Lee National Pump, Inc., through its president, Larry Lee, purchased cold drawn steel bars from the defendant for the purpose of using them as line shaft in turbine irrigation pumps. The bars were not nearly straight enough to be used as line shaft and all of the rice irrigation wells made with them failed, causing over a hundred thousand dollars in damage to the plaintiff. The plaintiff claimed that there was an express and implied warranty that the bars would function as line shaft. The defendant took the position that the plaintiff purchased what was basically a raw product, the cold drawn steel bars, and plaintiff tried to use them as what should have been a finely honed finished product, the line shaft. In other words, the defendant claimed it didn't sell the plaintiff line shaft, but just sold it steel bars. I was the sole counsel for the defendant, with an associate sitting in who did not participate in the trial of the case. The court, sitting as a jury, ruled for the defendant. The case was interesting due to the various fact issues arising out of what was a tragic miscommunication between the plaintiff's president and the defendant's sales representative. There were also interesting questions of the plaintiff's continued use of the bars after he knew, or should have known, that they were not functioning properly as line shaft, and also questions of mitigation of damages. The case was tried April 7 and 8, 1983, in the United States District Court for the Eastern District of Arkansas, Jonesboro Division to the Honorable G. Thomas Eisele, senior judge. Lee National Pump was represented Mark Ledbetter, Esq., now of Gerber, Gerber & Agee, 7th Floor, Cotton Exchange Bldg., 65 Union Avenue, Memphis, TN 38103, 901-523-0019.

D. Burns v. Burlington Northern Railroad, a State Court jury trial. Although personal injury is not my normal area of practice, I tried this personal injury case because of its real property issues. The plaintiff and a friend were motorboating down the St. Francis River in hunt of ducks when the boat ran into a fallen telegraph wire and capsized. The plaintiff suffered severe injury to his shoulder requiring surgery and sued for his injuries. The main issue in the case was whether the railroad was responsible for the long-unused telegraph wire which had fallen into the river. The wires had not belonged to the railroad and, prior to the accident, they had sold the right-of-way on which the wire and poles were located. However, the railroad continued to collect rents on the lands long after they were purportedly sold. Our motion for summary judgment was denied, the Court ruling that there was a fact issue as to whether the railroad had a responsibility to see that the wires were taken down before they were allowed to fall into disrepair. The plaintiff sued for $105,000 and the railroad offered $5,000. The case was tried to a jury which, after two and a half hours of deliberation, reported hopelessly deadlocked, 6-6. At that point, the plaintiff accepted the $5,000 offer. The case was tried May 8, 1985, before The Honorable David Burnett, Circuit Judge, in the Circuit Court for the Eastern District of Clay County, Arkansas. I was sole counsel for the defendant railroad at trial. Plaintiff was represented by Clifford M. "Joe" Cole, 249 East Main Street, Piggott, Arkansas 72454 (501) 598-2233.

E. Garris v. Massey, a State Court non-jury trial. Our firm represented, through Mid-South Title Insurance Corporation, the defendant Jim Massey. The plaintiffs, heirs of the defendant's deceased grantor, brought suit in chancery court to have a deed set aside on the grounds of the grantor's alleged incompetency and undue influence practiced against her by her husband. The grantor was deceased by the time of trial, and her husband had secreted himself. Neither side was able to offer any reliable expert testimony as to her mental state at the time of the execution of the deed. Therefore, in excess of 30 witnesses testified as to layman's observations. During the trial, the plaintiffs' witnesses and the defendant's witnesses (who were all under the Rule and outside the courtroom) would engage in arguments, or at least that was reported to the attorneys. After a three-day trial, the chancellor ruled in favor of our client. I served as chief counsel and was assisted by grantee's personal counsel. The case was appealed and the appeal is reported at 270 Ark. 646, 606 S.W.2d 109. The case was interesting both for its emotional value and because, despite a great deal of testimony as to many incidents of bizzare behavior on the part of the grantor, there was corresponding testimony of lucid behavior at other times, including the execution of the deed in question. The case was tried in September, 1979. The plaintiff was represented by Kirby Riffel, Esq., P. O. Box 19, Pocahontas, AR 72455, 501-892-5034.

F. Webster v. Craighead County, a Federal Court jury trial. Our firm represented Craighead County, the sheriff, and two deputy sheriffs. The plaintiff claimed that he was the subject of a conspiracy to deny his civil rights and that he was subject to unlawful arrest and detention in violation of 42 U.S.C.A. 1983, 1985 and the 14th Amendment. Prior to trial summary judgment was rendered in favor of the county and the sheriff (and certain co-defendants), but we had to go to trial on the issue of unlawful arrest and detention by the deputy sheriff. The plaintiff, who had been a career non-commissioned officer in the Navy, had been divorced from his wife and initially granted custody of the children. In response to a motion by his ex-wife in the divorce proceedings, the court amended the decree to order custody of the children to be placed in the ex-wife. Though it was not specifically spelled out in the order, the attorneys for the ex-wife induced the sheriff's department to go and physically take possession of the children. The chief deputy, concerned with the lack of specific order or a body attachment, called the chancellor and was orally told by the judge to have deputies pick up the children. The deputies went to the plaintiff's house and were informed the children were not there. The plaintiff claims the deputies forced him by implied threats to get into the police car and show them where the children were. The deputies, on the other hand, claimed that the plaintiff volunteered. A jury verdict was returned in favor of the defendants. I acted as sole counsel for the defendants. The interesting issue in the case was whether the plaintiff, who was a career Navy man, might have interpreted a request by the deputies as an order. There was an issue about the appropriate form of the jury instruction as to the issue of whether the plaintiff was being forced to go with the deputies was viewed from the plaintiff's state of mind or the deputies' state of mind. The case was tried in June, 1986, in the United States District Court, Eastern District of Arkansas, Jonesboro Division, the Honorable G. Thomas Eisele, senior judge, presiding. The plaintiff was represented by his brother, Warren Webster, Esq., P. O. Box 3021, Jonesboro, AR 72403, 501-932-4663.

G. Luster v. Retail Credit, a Federal Court jury trial. the plaintiff sued Retail Credit for alleged libel and slander in a credit report seeking compensatory and punitive damages. Retail Credit claimed that it acted in good faith, enjoyed qualified immunity, and in any event, had not acted with such maliciousness as would support an award of punitive damages. The jury returned a defendant's verdict as to the corporate plaintiff, but awarded the individual plaintiff $50,000 in compensatory damages and $100,000 in punitive damages. On appeal, the punitive damages were ordered remitted. The case is reported in 575 F.2d 609. I was associate counsel to my partner J. C. Deacon at trial. I was chief counsel on appeal and argued the case before the Eighth Circuit. At the time, this was the largest punitive damage verdict that had been awarded in the Jonesboro Division. The plaintiff was represented by Bill W. Bristow, Esq., 216 East Washington, Jonesboro, AR 72401, 501-935-9000. The case was tried December, 1977 in the United States District Court for the Eastern District of Arkansas, Jonesboro Division, the Honorable Terry Shell (deceased) presiding.

H. Citizens Bank of Jonesboro v. The Federal Deposit Insurance Corporation, a Federal Jury trial which was settled after a jury was picked. The FDIC took over The Corning Bank in Corning, Arkansas which had sold participations in over $1,000,000 worth of loans to Citizens Bank. Due to the fact that the due dates on the participations were prior to the due dates on the loans, Citizens Bank took the position that the participations represented direct obligations from The Corning Bank to Citizens Bank and payment was not contingent upon payment by the borrowers on the participated loans. Our office represented Citizens Bank of Jonesboro. The FDIC took the position that the participations were what they said they were, participations, and that any other agreement was invalid against the FDIC pursuant to 12 U.S.C.A. 1823. The case was settled by payment of $864,000. The interesting issues in the case involved the claim of Citizens Bank that a participation was in essence a direct obligation by the selling bank and the effect of the "shield law" (12 USCA 1823). I acted as sole counsel for the bank. The case was to be tried in the United States District Court for the Eastern District of Arkansas, Jonesboro Division, the Honorable Henry Woods presiding. The FDIC was represented by David M. Powell, Esq., 2200 Worthen Bank Building, Little Rock, AR 72201, 501-371-0808.

I. J.I. Case v. Citizens Bank of Jonesboro, Horner-Morris Abstract Company, Third-Party Defendant, a Federal Court non-jury trial. Our office represented Citizens Bank of Jonesboro as a defendant and third-party plaintiff against an abstract company which did not reveal the existence of a judgment in an abstract relied upon by the bank in making a loan. The abstracter certified that it had searched the judgment records only for "William F. Barton, III." The abstracter did not pick up, and the abstract did not reveal, a judgment against "Bill Barton." The court, after finding that the judgment against "Bill Barton" was a lien upon land owned by "William F. Barton, III," and was superior to Citizens Bank's mortgage lien, gave judgment in favor of Citizens Bank against the abstract company. The interesting issue was whether the abstract company could be held liable for missing the judgment even though it limited its liability to one name. The bank was successful in convincing the court that the name "Bill" was no mere nickname, but a "diminuitive" which in essence was the same as the name the abstract had certified. The case was tried in the United States District Court for the Eastern District of Arkansas, Helena Division, on October 21, 1985, to the Honorable Henry Woods. I was sole counsel for Citizens Bank in the case. The attorney for Horner-Morris Abstract Company was David Solomon, Esq., 215 Cherry Street, Helena, AR 72342, 501-338-7427.

J. Hardcastle v. United States Automobile Ass'n, a State Court non-jury trial. We represented United States Automobile Ass'n (USAA). The plaintiff, Dr. Hardcasteld, claimed that he orally cancelled a certain insurance policy because he was told by the defendant's representative that the coverage was cumulative to coverage he already had. A fire loss was suffered and, if the insurance had not been cancelled, he would have had $15,000 additional coverage. Suit was brought to set aside the cancellation. The defendant's representative could not recall the exact telephone conversation, but testified she was aware the coverage was excess and not cumulative and would not have told Dr. Hardcastle what he claims he was told. The chancellor, sitting as the trier of fact, held that Dr. Hardcastle knew he was cancelling his coverage and the cancellation would not be set aside. I acted as sole counsel for USAA. The interesting aspect of the case is that the testimony of the USAA representative as to her custom and usage overcame in the chancellor's mind the direct testimony of Dr. Hardcastle as to the detailed aspects of their conversation. I was sole counsel for USAA. The case was tried on April 23, 1983, in the Greene County Chancery Court to the Honorable Graham Partlow, Chancellor. Dr. Hardcastle was represented by Ray Allen Goodwin, Esq., P. O. Box 726, Paragould, AR 72450, 501-239-2225.

K. Additionally, I have participated in other cases as associate or chief counsel at trial and as chief counsel on appeal. A list of citations will be supplied if desired.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal

matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

D. Carroll, et al, v. Citizens Bank, et al, a Federal Court case which is scheduled for jury trial in May, 1988. Our firm represents Citizens Bank of Jonesboro, which acted as trustee in a defaulted bond issue. This is a multi-count class action case charging, inter alia, securities fraud, breach of fiduciary duty, and violation of the Racketeer Influenced and Corrupt Organization Act (RICO). All of the solvent defendants (bond counsel, attorneys for borrower and the underwriter) have settled, leaving our client, the defendant trustee bank, as the only solvent defendant left in the case. Significant class and factual discovery was taken prior to the commencement of long and detailed settlement negotiations between the settling defendants and the plaintiffs. That settlement has now been approved by the court. I have acted as sole counsel during discovery to date and at trial will act as co-counsel with my partner, J. C. Deacon. The case, when tried, will be a case of first impression on several issues in Arkansas including the duty of a trustee bank in a bond issue, fraud on the market theory of liability, election of remedies from approval of Chapter 11 plan in bankruptcy, and reckless disregard equating to scienter. The attorney for the plaintiff is J. Michael Rediker, Richie and Rediker, Birmingham, AL, 205-251-1288. Counsel for settling defendants who are still subject to cross claim by Citizens Bank for contribution and/or indemnity are Thomas Ray, Esq., Schultz, Ray & Kurrus, 1600 Worthen Bank Bldg., Little Rock, AR 72201, 501-375-2301; Otis Turner, Esq., P. O. Box 607, Arkadelphia, AR 72932, 501-246-2468; and Stephen Matthews, Esq., P. O. Box 7808, Pine Bluff, AR 71603, 501-534-5532.

E. FDIC v. Jim Manatt, a Federal Court jury trial scheduled for trial sometime next year. I am sole counsel for Jim Manatt, former President of the Corning Bank, which was closed by the FDIC. The FDIC sues Jim Manatt and the directors for an excess of $6 million, claiming negligent lending practices. Counsel for FDIC is Webb Hubbell, Rose Law Firm, 120 East Fourth Street, Little Rock, Arkansas 72201 (501) 375-9131. Counsel for co-defendants are Mr. J. R. Buzbee, Givens and Buzbee, Suite 1004 300 Spring Building, Little Rock, AR 72201, (501) 376-3418; Mr. Martin Aussenberg, Esq., 80 Monroe Avenue, Memphis, TN 38103-2186 (901) 526-7000; Mr. W. Lee Tucker, Boswell, Tucker & Smith, Bryant Center, Bryant, AR 72022-0798 (501)-778-2573.

C. FDIC v. Scott Manatt, a Federal Court jury trial scheduled to go to trial later this month. The FDIC sues Scott Manatt, a fellow attorney, on $318,000 in promissory notes made to the Corning Bank which was closed by the FDIC. The defense claims an accord and satisfaction which the FDIC attempts to avoid pursuant to 12 U.S.C. § 1823(e). On counter-claim, the defendant attempts to replevin artwork which was at the bank at the time it was taken over. The FDIC defends the counter-claim on the basis of a supposed security interest in the artwork superior to defendant's claimed ownership rights. I am sole counsel for the defendant. The FDIC is represented by Keith Morrison, Esq., Wright, Lindsey & Jennings, 2200 Worthen Bank Building, Little Rock, Arkansas 72201 (501) 371-0808.

D. Unifirst Savings & Loan Association v. The American Insurance Company (Fireman's Fund), a Federal Court jury trial which will be tried, in all probability, sometime next year. The plaintiff Unifirst originally brought action for declaratory judgment in Poinsett County, (Arkansas) Chancery Court seeking a declaratory judgment that it had no duty to pay under a $250,000 letter of credit which had been presented twice. We removed the case to Federal Court and counter-claimed for judgment on the letter of credit. I am sole counsel for The American Insurance Company (Fireman's Fund). The plaintiff Unifirst is represented by Gregory Hopkins, Esq., Hopkins & Erwin, P.A., Post Office Box 47, Little Rock, Arkansas 72203 (501) 372-1655.

E. FDIC v. The American Insurance Company (Fireman's Fund), a State Court jury trial which may go to trial next year. The FDIC sues under a Bankers Blanket Bond claiming that certain loans made were subterfuges to hide bad loans from the FDIC examiners. The insurance company defends, inter alia, claiming that even if the allegations in the complaint are true, such actions do not amount to "dishonesty" as defined in the blanket bond. I am sole counsel for The American Insurance Company. The FDIC is represented by Jerry Malone, Esq., Friday, Eldredge & Clark, 2000 First Commercial Building, Little Rock, Arkansas (501) 376-2011.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous

business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I plan to have all financial arrangements with my firm completed before separating from the firm.

2. Explain how you will resolve the potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would plan not to hear any cases wherein my law firm represented a party or where a former client of the law firm was involved for a period of at least five years after being appointed. Prior to the expiration of that time, I would divest myself of my interests in At Risk Partners, which owns the building where my law firm practices. Of course, if any suit were brought regarding any matter in which I had a direct or indirect financial interest, I would recuse myself. This would include any suit that might affect price, allocation, supply and demand of oil and gas, as my family (father, mother, brother) and I own various interests in oil and gas royalties, some of which date back to the 1930's. If ever any situation arose where there might be any question about a conflict of interest, I would prefer to recuse myself rather than allow any question of impartiality to linger.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If

you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

(a) In 1960 and 1961, while in high school, I worked in the campaign for John Tower, Republican candidate for Senator from Texas, in the special election to fill the seat vacated when Lyndon Johnson became Vice President. Activities included stuffing envelopes, yard signs, and handbills.

(b) In 1964, I was the President of the Young Republicans Club at the University of Arkansas. In that capacity, I worked for the candidacies of Barry Goldwater for President and Winthrop Rockefeller for Governor of Arkansas. Activities included organizing mailing efforts, yard signs, handbills, and a mock election at the University of Arkansas in which Senator Goldwater and Governor Rockefeller faired significantly better than what they did in the general election.

(c) In 1966 and 1968, as member and past President of the Young Republicans Club at the University of Arkansas, I worked for the election of John Paul Hammerschmidt for U.S. Representative, Winthrop Rockefeller, and President Nixon.

(d) In 1972, I worked in the primary campaign of Randall W. Ishmael, my law partner who was running for the State Senate in the Democratic primary, with no Republican opposition in the general election. My principal duty was keeping track of the calendar and Mr. Ishmael's campaign appearances.

(e) In the spring of 1974, I acted as Craighead County Chairman for the re-election campaign of Senator William Fullbright in a Democratic primary, it being my view that there would be no credible Republican opposition in the general election. Despite my Republican background, local members of the Democratic party asked me to take the job, as they were having difficulty finding any prominant local Democrat to do so. Apparently, that was due to the fact that Senator Fullbright's defeat by then Governor Dale Bumpers was a foregone conclusion. While I had my disagreement with some of Senator Fullbright's positions, I did admire his integrity and thought it was inappropriate that no one apparently was willing to stand up publicly for him in Craighead County. Thus, I agreed to serve as the county campaign chairman for Craighead County while pointing out to those who asked me to do so my Republican background. My duties were the typical ones of a county campaign chairman: Organizing rallys, organizing voter identification, telephoning, yard signs, handbills, rallys for Senator Fullbright in the county, and the effort to get out the vote on election day. After Senator Fullbright's crushing defeat, which I recall was in the neighborhood of 65% to 35% statewide, and 55% to 45% in Craighead County, I never again attempted to involve myself in the affairs of the Democratic party, save and except for contributing to some judicial candidates who had no Republican opposition in the general election.

(f) In 1980, I was a member of the Craighead County Steering Committee for Frank White, Republican candidate for Governor. The committee would meet weekly and plan and organize campaign events, such as rallys, mailings, telephoning, etc. I served in the same capacity in the 1982 re-election campaign for Governor White.

(g) Between 1980 and the present, as a member of the Craighead County Republican Committee, I have participated to a limited extent in the campaigns of Republican candidates in Presidential, Senate and Congressional races. However, my efforts (other than monetary contributions) would have been limited to advising as a committee member as to campaign activities.,

(h) From the fall of 1983 to General Election 1984, I served as legal counsel for campaign of Woody Freeman, Republican candidate for Governor of Arkansas; general legal advice on election laws; negotiated settlement of one disputed.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

(a) Until 1982, all attorneys under 50 years of age in Craighead County were subject to appointment for indigent criminal defendants. I averaged approximately three to four such appointments per year from 1970 to 1982, which probably involved several hundred hours lawyer time. Although a fee was available from the county in the amount of $150 to $300 for each such representation, I never applied for or accepted a fee, it being my opinion that representation of indigents was a professional duty on the part of the Bar. Likewise, from approximately 1980 to the present, I receive an average of 2 appointments per year to represent persons who are being involuntarily committed for mental disorders, most of whom are indigent. Except for one case which involved two hearings, I have never applied for or accepted a fee for these representations, for the same reasons that I did not in regard to criminal prosecutions.

(b) In 1974, I devised and prosecuted a "friendly" lawsuit for the purpose of obtaining $34,000 in excess collections on a bond issue for the Craighead County-Jonesboro Public Library's building fund. I did not charge any fee for those services which involved 15 to 20 hours of my time.

(c) During the 1970's I was the attorney for Abilities Unlimited which runs a sheltered workshop for persons with mental handicaps. During this time, I probably devoted 100 to 200 hours time doing legal work (as opposed to being a member of the board) for which I did not bill a fee.

(d) In 1979, I did the legal work to create corporate entity for Hospice, a facility for terminally ill patients to stay outside of a hospital environment. Approximately 10 hours were spent in this effort for which I did not request a fee.

(e) In 1985, I represented the son of a family whom I knew were in financial difficulty who was charged with disorderly conduct in a movie theatre. I have been successful in having the case perpetually continued. I spent approximately 8 hours on this matter for which I did not charge a fee.

(f) Since March 1986, I have been representing a Nigerian national who has been sued by a bailbondsman for a guarantee he signed in regard to his brother's bond. His brother fled the country back to Nigeria. So far, I have spent approximately 15 hours on the case and if it is ever tried (which I have successfully prevented so far), I am sure an additional 20 hours will be spent. I will not ask any fee for my services.

(g) In 1986, my son brought to my attention a tragic situation regarding three children whose mother had suddenly died and whose father, who had deserted them for years, suddenly announced that he was going to take the children. The children were quite distraught because, what little they knew of their father, they disliked and especially disliked his present wife. The children wanted to stay with an uncle of their mother who lived in Michigan. There was a great deal of fear that the father would physically take the children so I had to immediately file guardianship proceedings. These were contested by the father's parents, and an all day hearing was held on the temporary guardianship and letters of temporary guardianship were awarded to the uncle. I spent approximately 20 hours on this matter, for which I did not bill a fee. (Strangely enough, after living in Michigan for three months, the children decided they wanted to come back and live with their grandparents.)

(h) Also in 1986, I obtained a divorce for a woman who had a bad situation with her husband, but who was told by the Legal Services that they could not even interview her regarding her case for at least 60 days. Approximately 5 hours were spent on this matter for which I did not bill a fee.

(i) Also in 1986, I represented an Iranian national and his wife who were accused of making harrassing telephone calls. I was able to get the charges dropped in return for an apology to the victim. The time spent was approximately 15 hours, for which I did not charge a fee.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership. What have you done to try to change these policies?

(a) In 1963, I became a member of the Arkansas Alpha Chapter of Sigma Phi Epsilon social fraternity and remained an active member until I received by Bachelors degree in 1966. While I was in college, I did not attempt to change the exclusive white male policy of the fraternity.

(b) In 1966, I became a member of Lodge #1324 of the Ancient Free and Accepted Masons of Texas. I did this at the request of my mother in honor of my deceased grandfather who was an active Mason. After I was raised to a third degree Mason, I never attended any other meetings of the Lodge, but I do pay my membership dues each year. I have never joined the Lodge in Arkansas. The Lodge is a male organization with a womans' auxiliary group. I do not know whether it discriminates on the basis of race or not. Due to my non-involvement with the affairs of the Lodge, I have not attempted to modify whatever practices it has.

(c) In 1973, I joined the local Lodge of the Benevolent and Protective Order of Elks so that my son would have a place to swim and my wife and I could have a place to dine where alcoholic beverages were served. (I live in a "dry" county.) I went to one Lodge meeting for my initiation and have never attended another meeting. The Order is a male organization with a womans' auxiliary group. I do not know whether it discriminates on the basis of race or not. Because of my non-involvement with the affairs of the Lodge, I have not attempted to change any of their policies.

(d) All of the organizations in which my involvement is active--Episcopal Church, Republican Party (local, state, and national), Arkansas Bar Association, Craighead County Bar Association, Jonesboro-Craighead County Public Library--are actively non-discriminatory in their policies.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated.)

No; n/a.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal Judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The statement expresses legitimate concerns regarding the role of judiciary. In order to make the judiciary independent, the Constitution provided lifetime appointment and prevented salary reductions. This is correct and proper. However, the independence of the judiciary renders it an inappropriate forum to determine matters of public policy. Using the independence of the judiciary to make public policy that has not been, and perhaps would not be, made by elected representatives is a perversion of the democratic process. The courts should be vigorous in defending Constitutional rights of the individual against improper acts of the majority. However, in doing so, courts should not convert rule by the majority into rule by the minority. In short, a judge's role should be just that--to judge--leaving social policy to those who are elected to formulate and execute it.

AFFIDAVIT

I, Stephen Mathew Reasoner, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Stephen M. Reasoner
Stephen Mathew Reasoner

Date 1/14/88

Rebecca Combs
Notary Public

My Commission Expires:
7-7-92.

STEPHEN REASONER
SOURCES OF INCOME
1984 - 1986

1984

Barrett, Wheatley, Smith & Deacon Salary and Bonuses	$ 93,500
Interest on deposits in Citizens Bank of Jonesboro	3,343
Interest from D.A. Davidson Brokerage Account	462

1985

Barrett, Wheatley, Smith & Deacon Salary and Bonuses	$ 107,155
Interest on deposits in Citizens Bank of Jonesboro	2,977

1986

Barrett, Wheatley, Smith & Deacon Salary and Bonuses	$ 121,012.50
Interest on deposits in Citizens ·ens Bank of Jonesboro	1,514
Dividends from Fidelity Mutual Funds	1,604
Capital Gains on Fidelity Mutual Funds	1,139

1987 (Jan.-Oct. 21)

Barrett, Wheatley, Smith & Deacon Salary and Bonuses	60,500
Intrest on deposits in Citizens Bank of Jonesboro	902
Dividends from Fidelity Mutual Funds	1,162.61

FINANCIAL STATEMENT

STEPHEN M. REASONER

OCTOBER 1, 1987

ASSETS:

Cash on Hand	$20,302
Fidelity Ginnie Mae Portfolio	6,718
Fidelity Thrift Trust	8,468
Four Units Territorial Royalty Trust #1	80,000
One Unit Territorial Royalty Trust #2	1,000
Dove Properties, A Partnership (Rain Oak Apts)	18,783
At Risk Partners, A partnership (Century Center)	25,600
Barrett, Wheatley, Smith & Deacon Profit Sharing Plan	75,967
I.R.A.	8,132
Home located at 2912 Clearwood Cove, Jonesboro, Arkansas	150,000
40 acres pine timber, Beauregard Parish, Louisiana	37,000
1986 Chrysler Fifth Avenue	13,750
1982 Buick Skylark	3,550
1982 Ford EXP	1,400
One-half interest in 1980 Cherokee PA 28-180 airplane	9,125
Family heirlooms (silver service, jewelery, etc.	7,500
Miscellaneous personal property	10,000
Cash surrender value of four whole life insurance policies	10,412
Twelve shares in Barrett, Wheatley, Smith & Deacon, A Professional Association	30,000
Percentage interest in Barrett, Wheatley, Smith & Deacon cash on hand and accounts receivable	34,925
TOTAL ASSETS	$552,632

LIABILITIES:

Home Mortgage (Citizens Bank of Jonesboro)	$ 41,195
Chrysler Fifth Avenue note (Citizens Bank)	11,515
1982 Buick Skylark note (Citizens Bank)	2,157
Cherokee 180 airplane note (Citizens Bank)	8,567
Gold Master Charge (Maryland Bank N.A.)	1,771
Regular Master Charge (Union National Bank Little Rock)	1,103
Other charge accounts	1,171

TOTAL LIABILITIES	$67,479
NET WORTH	$485,153
TOTAL	$552,632

CONTINGENT LIABILITIES:

1. Percentage share (1/12) of partners' personal liability on At Risk Partners notes. (625,000 ÷ 12 = 52,083.33). The notes are well secured by mortgages on Century Center, 301 West Washington. All partners demonstrate financial ability to meet their percentage shares of this contingent liabilty so that joint feature of joint and several liability should not become a factor even in the event of deficiency. Deficiency, if any, would be small to modest.

Percentage share (1/12) of partners' personal liability on Dove Properties Partnership notes. (449,600 ÷ 12 = 37,466.67). The notes are well secured by mortgages on Rain Oak Apartments, intersection of Rain and Oak Streets, Jonesboro, Arkansas. All partners demonstate financial ability to meet their percentage shares of this contingent liabilty so that joint feature of joint and several liability should not become a factor even in the event of deficiency. Possibility of a deficiency is remote.

3. Percentage share (1/9) of partners' personal liability on Barrett, Wheatley, Smith & Deacon furniture and equipment note. (150,000 ÷ 9 = 16,500). The note is well secured by furniture and equipment and firm's long history and established income. All partners demonstrate financial ability to meet their percentage shares of this contingent liabilty so that joint feature of joint and several liability should not become a factor even in the event of deficiency. Possibility of deficiency is, in my opinion, non-existent.

4. My partner's share in airplane note (see above), which is well secured, on joint feature of joint and several liability. Partner's assets considerably exceed mine and the possibility that there should be any deficiency and that I would be called upon to pay his portion thereof is, in my opinion, non-existent.

Stephen M Reasoner

Stephen M. Reasoner

DATE 10/1/87

AMERICAN BAR ASSOCIATION **Standing Committee on Federal Judiciary**
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

February 2, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: STEPHEN M. REASONER
United States District Court
for the Eastern District of Arkansas

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Stephen M. Reasoner for appointment as Judge of the United States District Court for the Eastern District of Arkansas.

Our Committee is unanimously of the opinion that Mr. Reasoner is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

CONFIRMATION HEARING ON: EMMETT R. COX, KENNETH M. HOYT, GEORGE M. MAROVICH, AND ROGER J. MARZULLA

MONDAY, FEBRUARY 29, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howell T. Heflin presiding.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Karen Kremer, chief counsel, Subcommittee on Courts; and Frank Klonoski, minority investigator.

Senator HEFLIN. The hearing will come to order.

This morning, the Judiciary Committee holds its 22nd hearing in this Congress to consider nominations to the Federal courts. Today, we will take testimony on three judicial nominations. Judge Emmett R. Cox, of Alabama, has been nominated to be U.S. Circuit Judge for the Eleventh Circuit.

Two other nominations are for district courts, Kenneth Hoyt for the Southern District of Texas, and George Marovich for the Northern District of Illinois. In addition, we will take testimony on the nomination of Roger J. Marzulla to be Assistant Attorney General for the Lands and Natural Resources Division of the Justice Department.

As we customarily do, we will hear first from Senators who wish to introduce nominees to the committee. We will also receive an introduction from the Governor of Illinois for Judge Marovich.

Before we begin these introductions, let me note for the record that all four nominees before this committee this morning have completed extensive questionnaires on their qualifications, experience, and financial situations. The publicly available portion of these questionnaire responses will be printed in the record of this hearing.

We will also keep the record open for a limited time for follow-up questions to the nominees and for additional questions that may be submitted by members of the committee who are unable to be present this morning.

We will also include in the record the complete introductory statements of Senators, including any who are unable to attend in person this morning due to scheduling conflicts.

We are delighted to see Senator Phil Gramm of Texas here. Would you like to introduce the nominee that you have with you today?

STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator **GRAMM**. Thank you, Mr. Chairman. Mr. Chairman, it is my understanding that my colleague, Senator Lloyd Bentsen, is submitting a statement in support of Judge Hoyt.

Mr. Chairman, it is a great honor for me to be here today to introduce Kenneth Hoyt. Ken Hoyt is an American success story. His dad was a disabled veteran and a barber. His mama was a beautician. He worked his way through school, worked as a part-time janitor at Lincoln High School in San Augustine, Texas; worked his way through Texas Southern University and through the Thurgood Marshall School of Law.

He has had an outstanding career as an attorney and a judge. He served as judge of the 125th Civil District Court of Texas. He was elected justice of the First Court of Appeals. That represents 14 counties in Texas and roughly five million people, or one-third of the State.

He has an extensive record of public service. He has been involved in virtually everything that is good and beneficial in our great State. I think it is fair to say that he is one of the most outstanding nominees that I have had the privilege to recommend. He was rated well qualified by the American Bar Association.

His wife, Vee, is here, Mr. Chairman, if I might ask her to stand up.

[Ms. Hoyt stood.]

Senator **GRAMM**. So I am happy to introduce Ken Hoyt today. I would like to say, Mr. Chairman, that not only is Ken very well qualified, but because of the number of people who are stepping down in the Southern District of Texas by July, we are going to find ourselves with only four judges out of eight who are normally in office in the Southern District of Texas.

So I can assure you not only am I eager to see Judge Hoyt confirmed, but the judges who remain in the Southern District who now have a backlog of cases ranging up to 2,000 cases are more eager to see Judge Hoyt confirmed than I am.

Senator **HEFLIN**. Thank you, Senator Gramm. We appreciate it, and your prepared statement will be entered into the record, also, and Senator Bentsen's, and any others that are there will be put into the record.

[Statement follows:]

STATEMENT OF SENATOR LLOYD BENTSEN
JUDICIARY COMMITTEE HEARING ON THE NOMINATION OF KENNETH M. HOYT
FEBRUARY 29, 1988

I am pleased to speak in support of Judge Ken Hoyt as the Judiciary Committee commences this hearing and begins its consideration of his nomination to serve as a federal district judge in the Southern District of Texas. Judge Hoyt will bring valuable experience, sound integrity and solid judicial temperament to the federal bench, and I urge this Committee to act speedily on his nomination and clear the way for Senate confirmation. I appreciate the cooperation of the Committee in beginning its consideration of Judge Hoyt's nomination today, and am confident that the process will move quickly from here.

Since his graduation from Texas Southern University Law School in 1972, Judge Hoyt has compiled an impressive list of accomplishments. After a successful private practice, Judge Hoyt served with distinction as a state district judge before moving on to his present position as a member of the Texas Court of Appeals in Houston in 1985. And throughout his career he has maintained active participation in host of community and civic service organizations.

Judge Hoyt's important experience and his strong record of service explain why his nomination was so well received in Houston and enjoys tremendous support there. And the overwhelming caseload facing the Southern District of Texas, the second-heaviest caseload in the nation, makes prompt action on his nomination particularly important.

Judge Ken Hoyt possesses the background, experience and temperament necessary to be a fair and effective federal judge. I hope that this Committee will quickly approve his nomination so that the full Senate can do the same and allow Judge Hoyt to begin what I expect to be a long career of dedicated public service on the federal bench.

Senator HEFLIN. I will excuse you at this time and I will call on Senator Bond of Missouri to come forward and introduce his nominee.

STATEMENT OF HON. CHRISTOPHER BOND, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. Thank you very much, Mr. Chairman. It is a great privilege for me today to appear before this distinguished committee to present Roger J. Marzulla, who, as you indicated, has been nominated for the post of Assistant Attorney General for Land and Natural Resources Division of the Department of Justice.

My esteemed colleague from Texas has spoken of the outstanding achievements and accomplishments of the gentleman nominated for the judgeship in southern Texas. I, too, have the great honor to present to you a man who has achieved many high awards and a high level of service to the people of this country.

He, too, is a great success story. He began in his native California where he went to the University of Santa Clara to receive his bachelor of arts degree in political science, and then he obtained a law degree where he graduated magna cum laude and first in his class in 1971.

From there, he went to practice in a San Jose, California, law firm where he specialized in trial of business and property cases. He had a varied career there, serving as a judge pro tempore of the Santa Clara superior and municipal courts. He also taught real estate law at San Jose City College and international law at San Jose State University.

From 1981 to 1982, Mr. Marzulla served as President of the Mountain States Legal Foundation in Denver, Colorado, a not-for-profit public interest law firm. There, he was responsible for a number of significant cases involving natural resources, the environment, and constitutional rights.

Since 1983, he has been in the Land and Natural Resources Division of the Department of Justice. He began as a special litigator and then served as Deputy Assistant Attorney General, and since July he has been Acting Assistant Attorney General.

The Lands Division has very important responsibilities. We have worked with Mr. Marzulla during this time as he has dealt with problems of great concern to the people in our State and other States.

I believe, Mr. Chairman, that you and the committee will find him very well qualified and I would certainly urge that you give very favorable consideration to Mr. Marzulla.

Senator HEFLIN. Thank you, sir. We appreciate your kind introductory remarks. We will let you be excused now, and now we have Governor Thompson, who is here from Illinois.

Senator BOND. Thank you, Mr. Chairman.

Senator HEFLIN. We would like to ask him to come forward and introduce his nominee at this time. Governor, we are doing this to accommodate the Senators and Governors who have busy schedules, and then we will go back to an order.

We have a statement from Senator Paul Simon and a statement from Senator Alan Dixon, in which they advocate the confirmation of their constituent, George M. Marovich, and we will enter these statements in the record.

[The following were received for the record:]

STATEMENT OF THE HONORABLE PAUL SIMON
HEARING ON GEORGE M. MAROVICH
FEBRUARY 29, 1988

MR. CHAIRMAN. I am pleased to have the opportunity to present to this Committee one of my constituents, George M. Marovich, a distinguished Cook County Judge and respected member of the Illinois legal community. Judge Marovich has been nominated to the Federal District Court for the Northern District of Illinois.

I would like to thank the Chairman for holding these hearings so promptly after receiving this nomination. The court to which Judge Marovich has been nominated has had several long-standing vacancies which have put a strain on the current judges and slowed down the judicial process in that district. I am pleased that this is the second nominee to the Court for the Northern District of Illinois that is receiving Committee consideration since our return from the winter recess.

Judge Marovich's breadth of experience makes him an excellent candidate for the federal district court. He has had significant experience in both criminal and civil matters. He is familiar with the court system both as a litigator and a jurist. As a Chancery Division Judge in Cook County he has handled requests for injunctive relief - a power given to a limited number of state court judges and an important tool of federal judges.

After receiving both a Bachelor of Science and a Juris Doctor degree from the University of Illinois, Judge Marovich became an attorney for Chicago Title and Trust Company. At the same time he maintained a small general practice in Richton Park, Illinois. In 1959 he became a partner in the firm of Jacobs and Marovich where he represented several villages and school districts and played a significant role in the development and creation of the suburban areas of Cook County. From 1966 to 1976 he served as Vice President and Trust Officer of the South Holland Trust and Savings Bank, performing work in the areas of finance, taxation, and trusts.

In 1976, Judge Marovich was elected to the Circuit Court of Cook County. After successfully completing his first six-year term he won reelection to a second term which will expire this year. As a judge, Mr. Marovich served briefly in Housing Court, then tried major felony cases for eight years as a member of the Criminal Division. Since 1985 he has been assigned to the powerful and prestigious Chancery Division.

Judge Marovich is a well-respected member of the Illinois legal and judicial community. The Illinois State Supreme Court appointed him Chairman of the Section on Evidence for the Illinois Judicial Conference. In that role he conducts seminars on evidence for attorneys throughout the state. He has also served as Vice Chairman of the Committee on Injunctions and Declaratory relief at the annual meeting of the Conference. In addition, he is a member of the Cook County Circuit Court Nominating Committee which chooses candidates for associate judgeships, Board of Elections Commissioners and other court-appointed county offices.

A commitment to public service is of great importance in a federal judge. Judge Marovich has certainly demonstrated that commitment in his 12 years on the bench . Before being elected a judge in 1976, he devoted a considerable amount of time to Thorton Community College as a member of the Board of Trustees. His dedication to his home community is demonstrated in the evidence and criminal law classes he teaches at Thorton where he, himself, received an Associate of Arts degree over 30 years ago. Prior to 1976, Judge Marovich represented a number of indigent clients at no cost and participated in several community planning and assistance organizations.

Mr. Chairman, I believe that George Marovich will prove to be a respected and valued member of the District Court of the Northern District of Illinois. I ask my colleagues to give him their highest consideration in considering his nomination.

STATEMENT BY SENATOR ALAN J. DIXON
AT THE CONFIRMATION HEARING OF
GEORGE M. MAROVICH
TO BE A JUDGE ON THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS

FEBRUARY 29, 1988

Mr. Chairman, distinguished members of the Senate Committee on the Judiciary, I am pleased to speak on behalf of George M. Marovich, who has been nominated by President Reagan to serve as a judge on the United States District Court for the Northern District of Illinois.

George M. Marovich earned both his undergraduate and law degree from the University of Illinois, my own alma mater. Following his graduation in 1954, Judge Marovich became an attorney for Chicago Title and Trust Company dealing with all types of chancery proceedings. Simultaneously, he maintained a general practice in Richton Park, Illinois. In 1959, he became a partner in the firm of Jacobs and Marovich, a general practice in South Holland, Illinois. There, Judge Marovich handled a wide variety of criminal and civil litigation.

From 1966 to 1976, he served as Vice President and Trust Officer at the South Holland Trust and Savings Bank. He had legal responsibility in the areas of commercial law, probate, real estate, taxation, trust law and estate planning.

In 1976, he was elected to the Circuit Court of Cook County, where he has served with distinction for the last eleven years. In his first nine years on the Cook County bench, Judge Marovich was assigned to the Criminal Division and tried major felony cases. In this capacity, he presided over the first repeat offender court and disposed of more than 3,000 major felony cases involving violent crimes. Since 1985, Judge Marovich has been assigned to the Chancery Division, where he has tried complex civil litigation, involving equitable injunctive relief.

Further, Judge Marovich has been active in the Illinois Judicial Conference, serving as chairman of the Conference's Section on Evidence, and vice-chairman of the Committee on Injunction and Declaratory Relief. He also serves on the Nominating Committee of the Circuit Court of Cook County, which is a five-judge committee that screen and nominates candidates for associate judgeships, Board of Election Commissioners and other court appointees.

The degree to which Judge Marovich is respected is reflected by the fact that he has been rated Exceptionally Well Qualified by the Illinois State Bar Association, Well Qualified by the Federal Bar Association and Qualified by the Chicago Bar Association. The Chicago Bar Association praised

Marovich saying he "has proven ability in both the criminal and civil areas of law. He is hardworking and possesses judicial common sense. He has also demonstrated his ability to learn new areas of law." The Chicago Council of Lawyers declares, he "possesses the intellectual ability to write well and that his exceptional abilities in other areas would make him a solid addition to the federal district court bench."

Finally, in addition to his professional credentials, Judge Marovich is highly praised by attorneys who have practiced before him for his fairness, integrity, intellectual capacity, practical judgment, and ability of conduct trials.

Mr. Chairman, I believe that this review of Judge Marovich's record demonstrates his strong qualifications for a seat on the Federal District Court. I believe he will be a valuable addition to the Federal bench, and I am pleased to highly commend him to the Committee.

Senator **Heflin**. We will be delighted now to hear from you, Governor.

STATEMENT OF HON. JAMES R. THOMPSON, GOVERNOR, STATE OF ILLINOIS

Governor **Thompson**. Mr. Chairman, thank you very much. Thank you for the privilege of testifying before this distinguished committee; this is my second time in a number of months.

George Marovich is an excellent jurist, and it was with great pride that the legal community in Illinois, through all of the bar associations where Judge Marovich scored highly, through the practicing lawyers, through his peers on the Circuit Court of Cook County, warmly supported the nomination of President Reagan of George Marovich for the U.S. district court.

Mr. Chairman, I served for 5 years as a U.S. attorney in the Northern District of Illinois, and during and since that time I have had the occasion to become involved in the causes of a number of distinguished Illinois lawyers for nomination to the Federal bench, both associates of mine in the U.S. attorney's office and those in private practice.

Never have I seen our legal community more united behind the candidacy of a nominee for the district court than we rallied behind Judge Marovich, Republicans, Democrats, and independents. There were no ideological controversies, no dissents, no fights, no feuds, no fussing.

Both Senator Simon and Senator Dixon have supported this nominee, as you have said, Mr. Chairman, and other distinguished members of our political community in Illinois on both sides of the aisle told me as well of their pleasure at the nomination of Judge Marovich.

It is no secret that in Chicago in recent years our judiciary has been somewhat clouded by scandal. That scandal is being rapidly dissipated by the aggressive work of the U.S. attorney, the Federal Bureau of Investigation, the Internal Revenue Service, and the court itself.

Judge Marovich has served with honor and distinction and integrity in that court and he is one of our shining, shining stars. He has served in chancery court where the discretion of a judge is the strongest, as you know, Mr. Chairman, from your own court service, and he has come from that work not only unblemished but highly praised.

I would like to end my introduction of Judge Marovich to this committee by expressing my thanks to both the majority and the minority, to Senators Dixon and Simon, to Senator Leahy, the Chairman and others for scheduling this quick hearing on a nomination which has been universally acclaimed in our legal community.

Thank you very much, Mr. Chairman.

Senator **Heflin**. Thank you, sir. We appreciate it and we would be delighted for you to remain with us during our hearing, but if you have other things that you must do, then we will understand.

Governor **Thompson**. Thank you very much.

Senator **Heflin**. Thank you. We will come back to you, Judge Marovich, in just a few minutes.

I would like to ask Judge Emmett Cox if he would come forward and sit at the witness table.

Congressman H.L. Sonny Callahan wanted to be here, but was unable to do so and he asked me to read his statement of introduction.

Mr. Chairman, it is a great disappointment that I am not able to appear before your committee today to personally express my strong support for Judge Emmett R. Cox's nomination to the Eleventh Circuit Court of Appeals. A longstanding prior engagement in Alabama unfortunately prevents my attendance.

I do, however, deeply appreciate the Chairman's courtesy in allowing me to submit this statement in behalf of my constituent and friend, Judge Emmett R. "Rip" Cox. Judge Cox is a graduate of the University of Alabama and the University of Alabama Law School, two great institutions which the Chairman certainly respects.

He practiced law with firms in Birmingham and Mobile and was a partner in the Mobile firm of Nettles, Cox & Barker prior to his appointment to the Federal bench. Judge Emmett R. "Rip" Cox has served as a U.S. district judge for the southern district of Alabama since 1981. His tenure has been exceptional by all accounts and by every yardstick of judicial intellect.

A highly respected attorney in my district recently wrote me about Judge Cox and had these comments to make: "Judge Cox demonstrates outstanding judgment in the decisions he makes. He has an outstanding legal mind which enables him to get to the essence of a case or a point of law, no matter how complicated as quickly as any judge or lawyer that I have ever had any dealings with. We quickly found that Judge Cox had a better grasp of criminal law than most of us had acquired in almost 30 years of law practice."

The Department of Justice agrees with this assessment of Judge Cox's capability by recommending his nomination above other highly qualified individuals. He is an excellent district court judge and will be an outstanding appeals court judge. I urge the committee to send Judge Cox's nomination to the full Senate with a favorable recommendation.

Thank you again, Mr. Chairman, for providing me this opportunity to express my unqualified support for Judge Emmett R. Cox.

Senator Shelby of Alabama also was unable to be here and asks that I read his statement.

Mr. Chairman, I appreciate the opportunity to submit a statement in support of the nomination of Judge Emmett "Rip" Cox. Judge Cox will serve as an excellent addition to the U.S. Court of Appeals for the Eleventh Circuit.

Judge Cox has been associated with the legal profession for almost 30 years and has served as a U.S. district judge for the Southern District of Alabama over the last 6 years. He had a distinguished academic career at the University of Alabama, my alma mater, and at the University of Alabama School of Law.

He appears to possess the intellect, temperament, maturity and experience to become a fine Federal appellate judge. At one time or another, Judge Cox has been active in a number of professional and civic organizations, including the Mobile Bar Association and the Mobile YMCA. He has been praised for his honesty and integrity by lawyers who have practiced with him and before him. A review of his record demonstrates that he is qualified for a seat on the Federal court of appeals.

In closing, I again want to express my support for Judge Cox's nomination.

It is my pleasure, too, to speak in support of the nomination of Judge Emmett Ripley Cox to the U.S. Court of Appeals for the Eleventh Circuit. I have known Rip Cox for many years and he is truly deserving of this honor. I commend the President for his nomination.

Judge Cox has served the State of Alabama and, more specifically, the Southern District of Alabama as a U.S. district court judge since December 2, 1981. I had the privilege of speaking in his behalf during his confirmation hearings in 1981, and the fact that we are here again today stands as its own tribute to the job that he has done in that capacity.

Judge Cox was born in Cottonwood, Alabama. He graduated from the University of Alabama as an undergraduate in 1957, and in 1959 he graduated from the University of Alabama School of Law in the top 10 percent of his class.

Upon graduation, Judge Cox began his legal career in Birmingham, but in 1964 moved to Mobile where he continued his law practice until his nomination to the Federal bench. As a practitioner, Judge Cox had an extensive litigation practice involving both State and Federal courts. Most of his trials were jury trials and he was not only an excellent attorney in the courtroom, but also an appellate advocate.

As a young associate, he was responsible for a portion of an appellate brief which dealt with the admissibility of a newspaper in a property damage suit. The Fifth Circuit Court of Appeals treated the case as one of first impression and the decision is probably the leading case in the United States on the application of the hearsay rule.

During the last few years of private practice, Judge Cox was involved more in office practice, representing partnerships, sole proprietorships, and corporations in a variety of matters.

Judge Cox is well respected by his colleagues, by those who have appeared before him in his courtroom, and by the Mobile community. A majority of the American Bar Association found Judge Cox to be well qualified; a minority found him qualified. I add my best wishes to Judge Cox upon his nomination.

Judge Cox, if you would stand and if you will take an oath in regard to your testimony, do you solemnly swear that the testimony that you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge Cox. I do.

Senator Heflin. Be seated. Now, Judge Cox, you have resided in Alabama all of your life, have you not?

TESTIMONY OF HON. EMMETT R. COX, MOBILE, AL, TO BE U.S. CIRCUIT JUDGE FOR THE 11TH CIRCUIT

Judge Cox. Yes, sir.

Senator Heflin. You graduated from the University of Alabama and the University of Alabama Law School. I think that is correct, is it not?

Judge Cox. Yes, sir.

Senator Heflin. Before becoming a judge, you had 22 years of experience as a trial lawyer in Alabama?

Judge Cox. Yes, sir.

Senator Heflin. For the past 6 years, you have been a U.S. district court judge in Alabama. The district court on which you have been serving, like the circuit court to which you are nominated, is a very busy court. Last year, 1,320 cases were filed in the Southern District of Alabama, while 3,875 cases were filed in the Eleventh Circuit Court of Appeals.

What steps have you taken on the district court to deal with its heavy docket?

Judge Cox. Well, Judge, for one thing we have scheduled our calendered cases on a heavy basis. We set civil jury trials on a three-to-one basis; that is to say, if we have 10 trial days available we will set cases estimated to take 30 trial days on the assumption that some of them will settle and that we will in some way be able to dispose of them.

In civil non-jury cases, we double-set cases on a two-to-one basis, and we schedule very little office time, on the assumption that now and then we will get a settlement which will provide a little office time, but we don't schedule a lot of office time in the calendar itself.

And we do the best we can to efficiently use our magistrates. We use them to the maximum extent permitted by law, and we have made some progress with the docket.

Senator HEFLIN. Do you have any thoughts on what steps you will take to deal with the caseload on the circuit court if your nomination to that court is confirmed?

Judge Cox. Judge, I don't know that I have the experience to answer that question. I'm not that familiar with what can be done to accommodate caseload problems on the circuit court. I have never sat on that court by invitation. I have been invited to do so, but I have felt I should not because of my duties in Mobile. So I just don't think I have the experience to answer that question at this time.

Senator HEFLIN. In responding to a question in the committee's questionnaire about the process by which you were selected for this nomination, you indicated that you were asked a series of questions by attorneys at the Department of Justice.

You stated you were asked, and I am quoting, "how I as a judge would approach cases of various types." Could you give us an example of the kind of case that you were asked about at that time?

Judge Cox. Yes, sir. Some of the cases involved pure hypotheticals, no particular facts. I was asked, for example, how I would approach a question of statutory interpretation in terms of how important did I think the legislative history was and whether or not I thought legislative history from a subsequent Congress was important and, if so, how important, that kind of question.

I was also asked questions similar to one asked by this committee in terms of what my views were on court management of institutions at all levels, jails, other State institutions, and that kind of thing.

And I was generally asked how I would approach these problems in terms of what questions I as a judge would ask. I was explicitly told that no one was soliciting my personal views on any particular constitutional issue or statutory issue.

Senator HEFLIN. How many types of cases were you asked about?

Judge Cox. A number. One of the cases that I was asked about hypothetically was an inmate case; that is to say a condition of confinement case filed by an inmate. I was asked to comment on some subjects without reference to any particular case, as I mentioned, statutory interpretation, constitutional interpretation, class actions.

Some of the hypothetical cases involved zoning issues, as I recall, a "taking" question under the taking without compensation clause, a number of different types of cases.

Senator **Heflin**. All right, sir. As you may know, when this committee considered the nomination of Chief Justice Rehnquist 2 years ago, a lot of attention was given to the fact that the deed to a piece of property that he owned contained a covenant restricting occupancy of the property to white persons.

A great many views were expressed about restrictive covenants at the time. However, it has come to the committee's attention that subdivision restrictions at a property that you own contain such a restrictive covenant. Were you aware of that when you bought the property?

Judge Cox. Senator, I was not aware of that when I bought the property, although, in fairness, I have to say that I would not have been surprised to find that that was the case. This subdivision was developed in the 1940's and the restrictions were put off record at that time.

Senator **Heflin**. I think Chief Justice Rehnquist, after he found out, he took some sort of action on it. It was a restriction in his deed. I would assume that in a subdivision which contains many lots of other owners, it would be a difficult situation to take any action relative to that.

But, of course, the Supreme Court has ruled that those covenants are worthless and that they mean nothing, but have you given any thought to finding a way to expunge that restriction from the record?

Judge Cox. Well, I have considered that question. I would think it would probably have to be done by a class action because it is a large subdivision. The covenant has been totally ignored. There are black homeowners within the subdivision.

And for a class action to be maintained, there might be some question of whether there is a controversy of any kind. No one takes the position that the covenants are valid. I am not aware of anyone who takes that position.

Senator **Heflin**. And you say that there are people that the covenant would prohibit that have bought lots and are there?

Judge Cox. Yes, sir, who live there today.

Senator **Heflin**. All right. One of the rulings that you have rendered in the district court that has been reversed—well, I don't know exactly whether you ruled on it; you were involved in the ruling—was in the case of *United States* v. *Turner*, holding an attorney in contempt of court.

In response to a question in the committee's questionnaire asking about the cases in which you were reversed, you did not list that case. Why was that?

Judge Cox. In order to prepare to respond to the question in the questionnaire, which was to note all of my cases which had been reversed, I asked the clerk of the eleventh circuit, Mr. Cortez, to provide me a computer print-out of all cases from my court which had been reversed. He, with the assistance of the administrative office, provided me a print-out of that kind.

I then asked one of my law clerks who can read the print-out code far better than I can to prepare me a list of cases where I had been reversed, and he prepared the list. The *United States* v. *Turner* case is not on the print-out, and I assume that it is not on there because Judge Hand is shown as the trial judge on the printed opinion, or the published opinion of the eleventh circuit.

I had handled the contempt finding and Judge Hand, at my request, had handled the question of punishment on the contempt and when the opinion was published he was shown as the trial judge. That is why it was omitted from the list.

Had I stared at that list and thought about it, I certainly would have thought about the *United States* v. *Turner* case, but in haste I simply didn't do that because I had so much confidence that the print-out would not omit anything.

Senator HEFLIN. The *Turner* case was, I imagine, among the more controversial cases in which you presided since you have been on the court involving, as it did, criminal charges of voter fraud against several black citizens and counter-charges of selective prosecution.

As I understand it, you ruled that the prosecution in the case was not selective and ordered the case to proceed to trial without reference to matters of race. Then during the trial you held an attorney in contempt when, according to you, he did raise a racial inquiry.

Your contempt ruling was reversed on appeal by the eleventh circuit. In light of that reversal and the time that has passed since the case, would you come out the same way on the contempt citation if you had to do it again?

Judge COX. No, sir, I would not. I think the court of appeals opinion in that case fairly sets out the facts of the matter and fairly concludes that from a legal standpoint it should not have been the subject of a criminal contempt finding.

So I think it fair to say that they educated me on the law of criminal contempt as it applies to that type of situation and I accept what they have to say about it on the law and the facts.

Senator HEFLIN. Basically, as I recall from reading the case, it was reversed on the issue that the warning pertaining to it lacked specificity to cover the specific set of circumstances that arose concerning it, and that was the reason that it was reversed in regard to the contempt rather than on the issue of selective prosecution and the other issues, but it was mostly on the basis of the absence of specificity in the warning. Is that a correct statement?

Judge COX. I think so, Senator. I think the primary basis on which it was reversed was a finding by the court of appeals that my instructions relative to what lines of inquiry should not be pursued were not sufficiently definite or specific to support a finding of criminal contempt; that is to say that a criminal contempt finding must be based on a violation of a very specific order or instruction.

Senator HEFLIN. As I understand it, there is a witness, Mr. Stavis, who will testify about that today, and at the conclusion of his testimony you will be given an opportunity to make any response that you desire to in regard to that matter.

Would you like to introduce members of your family or any friends that you have with you today?

Judge Cox. Senator, my wife, Ann, is here. My son, John, starts a new job today and is not here at my request. [Laughter.]

Senator **Heflin**. Well, thank you, sir. We will let you step aside at this time and we will call Mr. Morton Stavis—I believe that is the correct way to pronounce it—to come forward.

Mr. Stavis, will you raise your right hand and take the oath? Do you solemnly swear that the testimony that you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Stavis**. Yes, I do. Thank you.

Senator **Heflin**. All right, sir. Mr. Stavis, you suggested that Judge Cox erred in holding Attorney Moore in contempt in the *Turner* election fraud case. The eleventh circuit agreed with that position when it overturned the contempt order.

I was going to ask you some questions about it, but I believe maybe it would be the best thing to let you make any statement that you would like to pertaining to the matter.

TESTIMONY OF MORTON STAVIS, ATTORNEY, NEW YORK, NY

Mr. **Stavis**. Thank you very much, Senator Heflin. I consider it an extremely serious responsibility for a member of the bar to appear before this committee to raise questions about a nominee for a judicial post, but I feel obligated to do so in this case.

I am a member of the bar. You may not find it easy to believe, but this is my 52nd year at the bar, and I do believe that senior members of the bar do have a responsibility to communicate their concerns about particular nominations.

My concern in respect to this nomination is not merely that Judge Cox made an error. The eleventh circuit has so found and he has acknowledged that he accepts that decision. My concern is that in the course of the *Turner* case Judge Cox manifested two attributes which I think should be explored by this committee.

First of all, in the *Moore* contempt case, what was involved, I thought, was considerably more than an error of law that Judge Cox made. What was involved at that particular point was an intolerance towards, and failure to respect, a responsible member of the bar and, after all, members of the bar are important cogs in the judicial machinery.

Another matter arose in the course of the *Turner* case to which I will refer which raised very serious questions as to Judge Cox's sensitivity towards the racial issues which were all over that case. Let me deal first of all with the question of attitudes towards the members of the bar.

I should say at the outset that the indictment was handed down on January 25, 1985. A verdict of acquittal emerged from the jury on July 5, 1985, so that we achieved complete success from the point of view of defense counsel in that case. But that doesn't mean that the issues do not remain.

First of all, let me refer to the experience with Howard Moore. Howard Moore is a prominent and respected black lawyer from California who came in to assist in the defense of one of the defendants in the *Turner* case.

He was cross-examining a witness and in a quiet and deliberate way asked a question, one question, part of a series. Judge Cox said he didn't want him to ask that question. Whereupon, as the record will show, Mr. Moore said, he takes exception to the judge's ruling, but he will move on, and he did, and for 20 minutes or so continued his examination, and that was the end of the court day.

Thereupon, Judge Cox called him before the bench and asked him to explain that one question. A colloquy ensued and Judge Cox said he was not satisfied with his explanation of why he had asked the question and then and there held him in contempt and immediately got off the bench.

The following morning, I rose and presented myself as counsel to Mr. Moore because it happens that I have had a great deal of experience in litigating, on the appellate level, contempt citations and I was familiar with the body of law.

And I pointed out the following morning what I thought were the grave errors that Judge Cox had committed and he paid no attention to it and proceeded along with the case. Once more, I spoke to Judge Cox. When the jury came out with its verdict of not guilty, I went into Judge Cox's chambers just as a matter of courtesy to say good-bye to him.

I am not a member of the Alabama bar and I had been admitted pro hoc vice and I wanted to thank him for admitting me and say good-bye to him. And I talked to him and I said, Judge Cox, why don't you clean the slate, reconsider what you have done, because there was really no basis for the contempt?

And he said, well, I'll think about it. Why don't you make a motion to vacate? And I did that; I did file a formal motion to vacate and, lo and behold, Judge Cox made absolutely no change.

Now, my concern is not, as I said, that Judge Cox was wrong here—that has been decided by the eleventh circuit, and even first-class judges can make mistakes—but that there was a persistence about it and absolutely no foundation for it.

I never in all of my experience in contempt cases have seen a situation where a lawyer asks a question, the judge tells him not to, he proceeds not to go any further and then he is held in contempt.

Invariably, in other cases, where contempt citations have been upheld, there is tussling, there is hassling, there is contest, there is issue between the judge and the lawyer, and the reason that that is required is because the Supreme Court of the United States has said in *In Re McConnell* that the basis of contempt is obstruction.

There was not a millisecond of obstruction in the conduct of Mr. Moore, and when all this was pointed out to Judge Cox nothing mattered and he persisted. I think it had an unwholesome effect.

Fortunately, the members of the bar who represented the defendants were, in the main, fairly courageous people and didn't feel chilled by the action of Judge Cox in that circumstance. But I fear greatly that in a situation where lawyers of less experience might have been in that courtroom they might have been considerably chilled by the action of Judge Cox.

I think it demonstrated what I said at the outset was a lack of respect, and intolerance, for members of the bar, who are an important cog in the judicial machinery.

The second point that I want to call to your attention, which I consider also to be extremely important, is the following. The indictment, as I said, was handed down on January 25, and there was a tremendous amount of motion work in the case involving questions of selective prosecution and a wide variety of other matters.

And, finally, Judge Cox announced that he was setting the trial of the case for June 17 in Mobile. Now, mind you, all of the witnesses came from Selma, Alabama and all of the incidents of the alleged offenses occurred in Selma, Alabama.

Selma is approximately—you perhaps know this better than I do, Senator, but Selma is approximately 175 miles from Mobile. Moreover—and this was extremely important, we thought—the racial composition of the population is altogether different in Selma, which is in the northern division of the Southern District, from what it is in Mobile, which is in the southern division of the southern district.

Essentially, the difference was that blacks in Mobile, to the best of my recollection, composed approximately 30 percent of the population, whereas in Selma and the areas around there blacks in the population reflected something like 55 to 60 percent of the population.

And so the judge fixed the trial for June 17 in Mobile. The defendants promptly moved to transfer the trial to Selma, and there was a fifth circuit decision so plainly on the nose that it was unavoidable. It clearly would have been reversible error had the trial been held in Mobile, and Judge Cox agreed and decided that the trial should be held in Selma.

Having decided that the trial should be held in Selma, lo and behold he then decided that the jury would be selected in Mobile. That became a little bit more complicated than simply the question of where you choose the jury because it so happened that as of July 1 of that year—namely, some 2 weeks after the date fixed for trial—there was to be a major change in the jury selection system in the Southern District of Alabama.

That change was that the district was moving from a district-wide wheel to division wheels. In other words, Selma in the northern division was to have its own jury wheel, whereas Mobile in the southern division would have its own wheel.

Naturally, the result of that would be that if you chose the jury in Selma after July 1, the chances of having a fair representation of blacks on the jury were enormously different than if you chose the jury in Mobile on June 17.

We had a hearing about this. We introduced expert testimony by a jury statistician who showed what the differences would have been depending upon whether you chose a jury in Mobile on June 17 or whether you chose a jury in Selma after July 1.

And it was as clear as anything that you would have in Mobile only a token representation of blacks, if at all, whereas if you had chosen a jury in Selma after July 1, you would have a fair representation of blacks.

Now, mind you, there was no question of speedy trial. Whether you held the trial on July 1 or June 17, it was well within the 6-month period. You were going to try the case in Selma anyhow. The only question was whether or not the court would consent to a delay of the trial for 2 weeks so as to permit a fairer chance of fair representation of blacks on the jury.

We argued that, we briefed it, we took testimony. Judge Cox said absolutely not; this case will be tried in Selma. I will select a jury in Mobile on June 17. We thought that the issue was of such importance that I filed a petition for writ of mandamus before the eleventh circuit because it just seemed to me incomprehensible that this should be how the case should be handled. But like most petitions for writ of mandamus on the eve of trial, it was denied.

As it turned out, in fact—and I don't think Judge Cox so intended it, but as it turned out there was, in fact, a fair representation of blacks on the jury. The jury was composed of seven blacks and five whites, but for reasons wholly different from the question of location of the trial. The reasons were perfectly obvious.

Judge Cox, in the middle of selection of the jury in Mobile, announced to the jury panel that we would all be moving to Selma. The jury would be sequestered and the case was expected to take something in the range of 3 weeks, which it did, at which point large members of white people on the panel found all kinds of excuses why they couldn't go up to Selma and be sequestered for 3 weeks in a Selma motel.

And by those various excuses, the coloration of the panel changed and ultimately it emerged that there was, as I say, a fair representation of blacks on the jury. However, that particular struggle that we had with Judge Cox was very disappointing and suggested to me the most serious questions as to the judge's sensitivity to conducting his court in a manner that would give confidence, particularly to the black people, that the case wasn't being structured so as to deny them an opportunity of fair representation on the jury.

Those are the two questions that I wanted to raise before you. I take it you have copies of the opinion of the eleventh circuit dealing with the *Turner* matter, but perhaps I ought to leave with your staff a copy of the petition for writ of mandamus and the appendix which is annexed thereto, which I think explains fully, and shows all of the expert testimony that we had, and this whole difficulty with respect to the location and the timing of the trial as it affected the question of the composition of the jury.

If you have any questions, Senator, I'd be pleased to answer them.

Senator HEFLIN. Well, I think all of those will be admitted into the record, a copy of the opinion in the contempt case *In Re: Howard Moore, Jr.,* which is at 812 F. 2d 1552, and an opinion written by the Hon. James E. Doyle, Sr., U.S. District Judge for the Western District of Wisconsin who was sitting there by designation along with Chief Judge Roney and Clark, a circuit judge, as a panel.

Now, in reading this opinion, Mr. Stavis, I note that on—turn, if you will, to page 1567, if you have a copy of that.

Mr. STAVIS. Yes, I do.

Senator HEFLIN. While the court reversed the case primarily on the matter of absence of specificity as to the warnings that were given, I note this opinion and this statement by the court which I would like for you to respond to and give whatever response you want to, and it speaks of you and it speaks of the appellant in this case, which was the attorney that was held in contempt.

"It is unnecessary to consider whether Moore's conduct was willful," Moore being the attorney, "as to either of the two orders. Nevertheless, because both Judge Cox and Chief Judge Hand inquired so closely into Moore's purpose in asking the question and appear to have been significantly influenced by the inadequacy of his response, we add a comment."

"We agree that Moore's attempted explanations directed at the end of the day of the instance on June 24 to his counsel on the morning of June 25, and through his counsel," meaning you, "in the July 24 motion for reconsideration, and directly on July 26 before Chief Judge Hand, were a study in evasion and opacity."

If you would kindly comment pertaining to that statement in the opinion?

Mr. STAVIS. Well, I have handled enough appellate work to have had the frequent experience that when the appellate court reverses a court below it frequently finds it appropriate to say some rather gracious things supportive of the action of the judge.

I do not believe that I personally said anything directed to the motives of Mr. Moore. I think Mr. Moore spoke himself about his motives, and what Mr. Moore essentially said was he believed that he had a right to show that Ms. Albirton was biased in favor of whites and against blacks.

And he said he thought he had a right to show that because she was being presented as a paragon of all virtues and her testimony was therefore unquestionably to be accepted, and that was essentially what Mr. Moore said.

Now, afterwards, on that very morning I personally went on to the cross-examination of Ms. Albirton and that is exactly what I did; namely, I showed her whole history of participation in the political struggles in Perry County, Alabama, which were, in fact, sharply racial—that is, as soon as blacks started voting after the Voting Rights Act of 1965—and the judge permitted me to do exactly what he had forbidden Mr. Moore to have done.

Now, I don't know why the judge treated me disparately, but whatever it was, that was what was done. And with all due respect, I don't think that either Mr. Moore or I was either evasive or opaque in our explanations.

Senator HEFLIN. All right, sir. Now, in regard to the other issue about the selection of the jury, I do believe you brought out that you raised this in an appellate proceeding known as a mandamus proceeding to the eleventh circuit, which was the circuit that handles the Southern District of Alabama where this case was being tried, and that this appeal process was denied; the mandamus was denied.

In making the statement that it was denied, you said something about it being customary or something of the sort. Did you fully raise this issue in this appeals proceeding before the eleventh circuit?

Mr. STAVIS. I thought it was very fully developed. I said it was customary in the sense that it is only the most unusual circumstance that a court of appeals will interfere a week before a trial with the conduct of the trial.

But I thought that the issue was of such overwhelming importance that it was worth calling it to the attention of the court of appeals. Perhaps I also wanted to call it to the attention of Judge Cox. Perhaps I wanted Judge Cox himself to realize more so than perhaps he did before that he was walking into a serious question of what might be reversible error.

And by the very fact that I had taken the time and attention to present it to the court of appeals, he would concern himself with the issue to perhaps a greater extent. I dare say it is even possible that I might have had some impact on Judge Cox because I pointed out to you that ultimately, by reason of the excusals of various people who didn't want to be sequestered in Selma, Alabama, for 3 weeks, many of the whites who were on the panel withdrew.

And perhaps Judge Cox even felt, let it be, because certainly after the jury was chosen we had no basis for complaint. The jury did have a fair racial distribution. There were seven blacks to five whites, which was about the distribution of population in the northern division.

So the fact that the court of appeals denied the petition for writ of mandamus, which would have been almost routine, and the fact that I even anticipated that as a likely consequence does not bear upon what I considered to have been the serious problem that was presented by Judge Cox's ruling.

Senator HEFLIN. The jury in the end result found for the defendants and acquitted the defendants in that particular case.

Mr. STAVIS. Correct.

Senator HEFLIN. All right, sir. Is there anything else you want to add, sir?

Mr. STAVIS. No. I think you have been very gracious in giving me this amount of time, but if there is anything else that you wanted me to answer, I would be glad to. I might say just for your interest, you know, this is one of perhaps half a dozen cases that the Department of Justice brought against black leaders in the so-called black belt of Alabama.

There was only one conviction, and that was the case of *United States* v. *Spiver Gordon.* That case was reversed by the eleventh circuit and remanded for a hearing on the issue of selective prosecution. The selective prosecution in the *Spiver Gordon* case is very similar to the selective prosecution issue that we had in our case. I just tell you that as a matter of interest.

Thank you very much.

Senator HEFLIN. Thank you, sir.

Mr. STAVIS. May I hand up these papers?

Senator HEFLIN. Yes, sir, you can.

Judge Cox, would you like to return to the witness table and make any statement in rebuttal?

Judge COX. Senator, with reference to the Howard Moore matter, as to the facts of the matter I think my perspective may be a little different from Mr. Stavis, but I am perfectly content with the detailed statement of the facts contained in the opinion on appeal and I think it is an accurate statement.

The finding certainly was not due to any lack of respect for Howard Moore, who is a good lawyer and a fine gentleman. That had nothing to do with it.

As to the handling of the Perry County voter fraud case, that is a case which was tried to a conclusion and the defendants were found not guilty, and under our system that is supposed to be the end of it and I had rather not make any comments about that case unless there are questions which the committee has.

Senator HEFLIN. Thank you, sir.

Judge Cox. Thank you.

Senator HEFLIN. We appreciate your testimony. As I understand it, there may be some questions submitted to both of you in writing pertaining to the matter by Senator Thurmond and maybe other members, and if so they will be submitted. We hope that you will respond to the questions as rapidly as possible. Now, we will conclude this.

[Written questions and answers follow:]

ANSWERS TO QUESTIONS FROM SENATOR THURMOND FOR JUDGE EMMETT R. COX, OF ALABAMA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

1. JUDGE COX, I CONSIDER JUDICIAL TEMPERAMENT TO BE A PREREQUISITE FOR A FEDERAL JUDGE. WOULD YOU GIVE ME YOUR THOUGHTS ON THIS SUBJECT?

ANSWER: A GOOD JUDICIAL TEMPERAMENT IS IN MY OPINION IMPORTANT, AND REQUIRES THAT A JUDGE HANDLE MATTERS BEFORE HIM WITH AN APPROPRIATE TONE AND TEMPO IN AN EFFORT TO: (a) HANDLE MATTERS FAIRLY; AND (b) LEAVE THE PARTIES AND THEIR ATTORNEYS WITH THE PERCEPTION THAT MATTERS HAVE BEEN HANDLED FAIRLY.

2. JUDGE COX, ARE THERE EVER ANY CIRCUMSTANCES UNDER WHICH A JUDGE SHOULD ATTEMPT TO ESTABLISH NEW JUDICIAL PRECEDENTS, AND IF SO, WHAT ARE THE CRITERIA THAT YOU WOULD USE IN ORDER TO DETERMINE THE PROPRIETY OF REVERSING AN EXISTING PRECEDENT?

ANSWER: THERE MAY, IN RARE CIRCUMSTANCES, BE CASES WHERE EXISTING PRECEDENT SHOULD BE REVERSED BECAUSE THE MATTER WAS PREVIOUSLY DECIDED WRONG. THE FIRST CONSIDERATION SHOULD BE THE DESIRABILITY OF STABILITY IN THE LAW, AND BECAUSE OF THE FACT THAT STABILITY IN THE LAW IS DESIRABLE, EXISTING PRECEDENT SHOULD BE REVERSED ONLY WHERE THERE ARE STRONG REASONS TO DO SO. IT IS ALSO IMPORTANT, HOWEVER, THAT CASES BE DECIDED CORRECTLY, AND THERE MAY IN RARE CIRCUMSTANCES BE CASES WHERE THE IMPORTANCE OF DECIDING THE MATTER CORRECTLY OUTWEIGHS THE IMPORTANCE OF MAINTAINING STABILITY IN THE LAW; SUCH A CASE SHOULD BE THE RARE EXCEPTION AND NOT THE RULE.

Emmett R. Cox

EMMETT RIPLEY COX

Senator HEFLIN. We will go to Mr. Hoyt, if you will come forward to the witness table. If you will raise your right hand and repeat after me, do you solemnly swear that the testimony you will give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge HOYT. I do.

Senator HEFLIN. Thank you, sir. Have a seat, sir.

Would you like to introduce any members of your family or friends that are with you here? We would be delighted for you to do that.

TESTIMONY OF HON. KENNETH M. HOYT, HOUSTON, TX, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Judge HOYT. Yes, sir, Judge. I'd like to introduce again my wife, Vee Hoyt, who is here with me. I have three children that were not able to make it, Michael, Stacy, and Justin, but they are here in spirit. I think I also see a college mate of mine who is here, who is executive director of the National Bar Association; Attorney John Crump is also here. I believe that is all I see at this time. Thank you very much.

Senator HEFLIN. All right. Do you have any opening statement that you would like to make, sir?

Judge HOYT. I have no prepared opening statement except to say that I certainly appreciate this opportunity to appear before the committee and to present myself in the humblest way, and I certainly hope that I will be able to answer all of your questions.

Senator HEFLIN. All right. According to your response to the committee's questionnaire, your experience both in private practice and as a judge has been almost entirely restricted to matters arising under State and local law.

Do you view this lack of Federal litigation experience as an impediment in assuming a position on the Federal bench?

Judge HOYT. I do not, Judge. I think that in the last 3 years my experience, especially on the appellate bench in our State of Texas, has given me quite a bit of experience with the Federal criminal process.

We, as you know, rely upon the Supreme Court of the United States to give us direction relative to the Constitution and we follow that in our State system. Much of our State statutory law and our State court of criminal appeals law has developed out of Federal decisions, and so I don't feel uncomfortable with that with this move.

Senator HEFLIN. Well, you have Rules of Federal Criminal Procedure and the Federal Rules of Civil Procedure and the Federal Rules of Evidence and other things that are somewhat different from some State rules.

What do you do to plan to bring yourself up to speed in the Federal law area?

Judge HOYT. Well, I will be attending a new judges' school fairly shortly; in fact, this week. I intend also, and have before me now, all of those Federal rules of procedure and evidence. I expect to study those. There are various videotape educational tools that I'll take advantage of.

I expect and hope to be at the fifth circuit conference in April to also increase my awareness of those differences between our State and Federal rules of evidence and procedure.

Senator HEFLIN. You have had a longstanding interest in constitutional issues and an issue which is still controversial, the use of illegally-obtained evidence in criminal trials.

In a note you authored for your law school's law review, you were critical of one decision in this field which allowed use of illegally-obtained evidence to discredit a defendant's testimony.

You wrote that this decision, and I quote, "may be, and rightfully so, interpreted by local law enforcement officers, as directed by the Supreme Court, to use any means necessary to obtain a statement from the accused."

You also raised in this article the question of whether the time has come to look for a means of deterring police misconduct that is more effective than the procedure of excluding from evidence information obtained by improper police practices.

How do you view the present state of the law with respect to illegally-obtained evidence; for example, confessions obtained under *Miranda* warnings? What other means of preventing police misconduct might be more effective than the exclusionary rule?

Judge HOYT. Well, that article was written 16 years ago and at that time there was a difference, or at least some differences between the circuits on how illegally seized evidence was to be handled.

Fortunately, also, in my opinion, the police conduct and the police activities in all areas did not follow what I thought was going to be a trend. I believe that the police departments have done very well in following *Miranda* and that line of cases.

As far as the use of illegally-obtained evidence to impeach, I believe that that is the present law; I know that that is the present law. I followed that in our State court. At that time I was a law student and I felt that that was an impingement. I don't believe so under the state of our law as it exists.

Finally, I believe that civilian review boards are a proper mechanism to some extent to make the transition, or at least help police officers and communities understand one another and to deal with what may be otherwise illegal enforcement tactics. I believe it has been proven to be effective in many areas.

Senator HEFLIN. What do you think about a good-faith exception to the rule that evidence seized in an illegal search may not be used in court?

Judge HOYT. Well, I think that the good-faith exception is our standard at this point and I believe that that would be the law that I would follow. I have no personal view different than that.

Senator HEFLIN. What is the proper role of a Federal trial judge in enforcing the fourth and fifth amendment rights of persons accused of crimes?

Judge HOYT. Well, I think—what role does the judge play? I believe that his role is the same as that of our criminal justice system, and that is to see primarily that the defendant get a fair trial in the process and to not interfere with that process or to allow that process to go awry of the rules of procedure and the statutory and case law that we have at hand.

So I view those constitutional fourth and fifth amendments as being, I guess, most important in that area, and I believe that those would be the ones that I would follow and have followed in writing opinions on the State appellate system and in writing about the Federal system, also.

Senator HEFLIN. Judge Hoyt, you have indicated in your response to this committee's questionnaire that you have been a member of a number of organizations. I am particularly interested in your membership in the following organizations: The National Urban League, Parents of Murdered Children and Survivors Coalition of Victims Rights, the Juvenile Justice and Delinquency Prevention Advisory Board, and Blue Ribbon Commission to Review the Criminal Justice Correction System.

Please tell us about the specific purposes or objectives of each of these organizations and your role in each. What have you learned from your participation in these organizations that will aid you in discharging the duties of a U.S. district court judge?

Judge HOYT. Well, let me start with the National Urban League. My involvement with the National Urban League has been simply as a member of a host committee, and on occasion when there have been national conventions, for example, in Houston this past summer, and serving in some capacity as maybe a member of a luncheon committee, dinner committee, end-of-the-year dinner committee.

My involvement as a board member of the Parents of Murdered Children and Survivors Coalition of Victims Rights has been primarily in the area of learning as much as I can relative to victims' rights in this area and the fact that in many instances children are not—or the parents of murdered children are not thought of as frequently and as often as they should be in these criminal cases.

As a former member of the Juvenile Justice and Delinquency Prevention Advisory Board, our responsibility was to monitor and approve for various State agencies, including the school districts in our State, funding for various programs specifically designed to keep children in school and designed to deal with children who are delinquent within the school system.

As a member of the Blue Ribbon Commission on the Criminal Justice System, this particular commission arose out of our problems with our State prison system in Texas and I served as a member on that board to assist the legislature in having hearings and drawing legislation relative to how we should handle our prison systems and how we should expand those systems and alternatives to imprisonment.

Those were the four boards that you mentioned. I think that what I have learned from my experience with these various boards has probably more to do with my community involvement than it does with my judicial involvement, and that is dealing with and learning to deal with individuals who are victims of crimes as well as the individuals who are the accused.

As far as the Juvenile Justice and Delinquency Commission and the Prison Reform Commission are concerned, I am very sensitive to those particular areas in light of the fact that we have at this very moment litigation still pending against the State of Texas on this matter, on our jail system.

Senator **Heflin**. Thank you. Is there anything else you would like to state or add? That is all the questions I have.

Judge **Hoyt**. No, sir.

Senator **Heflin**. Thank you, and we appreciate your appearance here. Thank you very much.

Judge **Hoyt**. Thank you very much.

[Written questions and answers follow:]

ANSWERS TO QUESTIONS FOR JUDGE KENNETH M. HOYT, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

1. JUDGE HOYT, DO YOU FEEL THAT A JUDGE SHOULD ASSUME DIRECT CONTROL OVER COMPLEX ISSUES AND CASES IN ORDER TO AVOID DELAYS AND TO EFFECTIVELY MANAGE SUCH CASES?

ANSWER: TO THE EXTENT THAT A JUDGE AND HIS CASE MANAGEMENT STAFF CAN FACILITATE THE DISPOSITION OF CASES I INTEND TO DO SO. HOWEVER, THIS SHOULD NOT BE INTERPRETED AS A DESIRE ON MY PART TO BECOME AN ACTIVIST OR ADVOCATE IN THE CASE. I BELIEVE THAT LAWYERS SHOULD TRY THE CASES.

2. JUDGE HOYT, WHAT IS THE PROPER APPLICATION OF STARE DECISIS IN CONSTITUTIONAL LAW? SPECIFICALLY, WHAT IS THE DUTY OF A FEDERAL JUDGE WHEN CONFRONTED WITH A CASE IN WHICH ONE OF THE PRECEDENTS OF HIS COURT CLEARLY CONFLICTS WITH THE CONSTITUTION AS THAT JUDGE INTERPRETS IT.

ANSWER: STARE DECISIS HAS PLAYED AND WILL CONTINUE TO PLAY AN IMPORTANT ROLE IN MY DECISIONAL PROCESS. A FEDERAL JUDGE IS REQUIRED TO ALWAYS SET ASIDE HIS PERSONAL VIEW IN HANDLING ANY AND ALL CASES. I HAVE HAD THE OPPORTUNNITY IN THE STATE SYSTEM TO BE CONFRONTED WITH A SITUATION WHEN MY OPINION WAS IN CONFLICT WITH THE COURT'S PRECEDENT. IN CASARES v. STATE, 712 S.W.2d 818 (1986), I WROTE A DISSENTING OPINION ON THE CONSTITUTIONALITY OF A STATE PAROLE CHARGE. THEREAFTER, I WROTE THE MAJORITY OPINION IN BEASLEY *v. STATE* 721 S.W.2 426 (1986) UPHOLDING THE CONSTITUTIONALITY OF THE PAROLE CHARGE. CLEARLY, THE *BEASLEY* OPINION WAS CONTRARY TO MY VIEW, YET I RESPECTED THE PRECEDENT OF OUR COURT. THE COURT OF CRIMINAL APPEALS LATER IN *ROSE v. STATE* (1987) AGREED WITH ME, HOWEVER.

KENNETH M. HOYT

Senator HEFLIN. Our next nominee is Hon. George M. Marovich, of Chicago, Illinois, to be U.S. District Judge for the Northern District of Illinois. Mr. Marovich, if you will raise your right hand and repeat after me the oath, do you solemnly swear that the testimony that you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge MAROVICH. I do, sir.

Senator HEFLIN. Please be seated. Would you like to introduce any members of your family or friends that you have with you?

TESTIMONY OF HON. GEORGE M. MAROVICH, CHICAGO, IL, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Judge MAROVICH. If I might, I'd like to introduce my wife, Lois; our son, John, and John's friend, Ann Zenk; my nephew, Jim Adler; and some very good friends who are part of the Washington community, Robert and Margaret Donahue. Bob is an associate administrator with the Federal Aviation Administration.

Senator HEFLIN. Well, fine. We are delighted to have you here. I note from your response to the committee's questionnaire that you have not had any published legal writings. I also understand that your practice as a State judge has been to deliver most of your opinions from the bench. This is what they do in England.

Would you plan to continue that practice if you are confirmed on the Federal court?

Judge MAROVICH. I certainly would not, and certainly the opportunity for written opinions is much more prevalent in the Federal judiciary, as you have staff to assist you with these things, which we are lacking at the State level.

Senator HEFLIN. I don't believe there is any publication in the West Publishing Company or any other, unless they have got something different in Illinois, that publishes a trial judge's opinions.

Judge MAROVICH. They do not.

Senator HEFLIN. But whereas you do have some of the trial judges' opinions—at least some trial judges and some of their opinions are published in the Federal system.

The northern district of Illinois has more than its share of complex civil cases. Do you foresee that it would be important in complex cases to render written opinions? How would you plan to tackle that task in light of your prior practice of oral rulings?

Judge MAROVICH. I believe that I have previously submitted to the committee, or to staff at least, some written opinions that I have submitted in my current capacity. I know that you are personally familiar with the workings of the Chancery Division and I sit there in the Chancery Division of the Circuit Court of Cook County.

And on a number of complicated cases which I have listed in my questionnaire, I did, in fact, issue written rulings. Certainly, in complicated cases I find it to be a big help if, for no other reason, that it helps you with the reasoning process, and in that manner it is certainly beneficial.

Senator HEFLIN. How do you think that the lack of litigation background would affect your work as a district judge?

Judge **Marovich**. Well, I certainly feel that all facets of a nominee's background are relevant to his or her qualifications for appointment, but I do believe that certain facets of your background are more material.

And since I am seeking appointment to the Federal judiciary, I sincerely believe that my performance as a State judge is a more material and reliable indicator of my future performance as a Federal judge than my lack of experience as a litigator before I did become a judge about 11 years ago.

I cannot create a background or an experience that I do not have, and I would agree that the evaluators of my potential to assume a judicial role in 1976 would make a legitimate inquiry into my background at that time. But I have been a judge, and I have been a judge for 12 years and as a judge I am a known quantity.

And if third-party commentators are to be believed, I have demonstrated the qualifications, the temperament, and sense of responsibility that has earned me what I believe is a reputation of a good State judge, and I would suggest that those same qualities would indicate the strong probability of being a fine Federal judge as well.

Senator **Heflin**. According to your response to the committee's questionnaire, you were at one time active in several local charitable organizations, but you have been precluded from formal pro bono activities since your election as a judge.

If you are confirmed for the Federal bench, what activities would you plan to undertake to fulfill the duty of all members of the bar to serve the disadvantaged?

Judge **Marovich**. Well, getting back to when I originally went into practice, I think it is an accurate statement that most of my clients were amongst the working poor, and if the truth were to be known, so was their lawyer, and I have never refused to be of assistance or to render help to anyone because they could not pay for it.

Most of my pro bono work was in the area of community involvement, as you have indicated, and my questionnaire would indicate that I served long as chairman of the board of Thornton Community College, and Mr. Donahue, who is with me today, can attest to that work since he served on that board with me.

And I was also active in the business community as president of the Chamber of Commerce, and in the bar association as a past president. And also I served for a dozen years as chairman of our police and fire board.

When I got to be a judge, the statutes in Illinois preclude those kinds of activities, even though they were all non-paying civic responsibilities. And I turned to the area where I am precluded—where I am allowed, I should say, to contribute, and that is in the area of teaching, and I have assumed that role with some vigor.

I teach two classes at Thornton Community College. I hold a chair and co-chair for the Illinois Judicial Conference that has to do with putting on seminars for my fellow State judges around the State. I participate in the National Institute of Trial Attorneys and I guest lecture at Loyola Law School and in various moot court competitions.

I also serve as a trustee of the Judicial Pension System, and if I am fortunate enough to be confirmed as a Federal judge, the one area that I would like to continue participation in more than any other would be in teaching.

Senator **Heflin**. I understand that you presided over a politically controversial case involving the Chicago Park District.

Judge **Marovich**. Right.

Senator **Heflin**. Can you tell us a little bit about that case?

Judge **Marovich**. Well, the case revolved around the change in the numbers in the city council and it had to do with a deadlock of 25–25 between what I will refer to as the Washington administration and what used to be the 29.

At issue was whether or not the mayor was "a member of the City Council of the City of Chicago," and thus had the right to be a tie-breaking vote. It was my ruling that he did, and as a consequence of that ruling it changed the composition of most of the political bodies, including the Chicago Park District, as to who went onto those boards by appointment.

Obviously, it had to do with thousands of jobs and the changing of control over those jobs, but the one thing about the Chicago Park District case that pleases me more than anything is that while it was a very significant ruling, it was not appealed.

Senator **Heflin**. What insights did you draw from that case about the difficulty of presiding over a politically-charged lawsuit?

Judge **Marovich**. Well, Senator, if I may be allowed an anecdote, I enjoy a unique situation in the city of Chicago. If you are looking for a true minority, then I certainly as a Serbian Republican qualify in the county of Cook.

And I did have a number of pre-trial conferences with the opposing factions, all of whom really were Democrats, and it was sort of an inter-family fight. And I remember on one occasion that I indicated to them that it wasn't necessary as far as this case was concerned that they liked one another. I certainly understood the political ramifications, not having recently fallen out of the Christmas tree.

But one thing that was a truth that they should acclimate themselves with is that neither Harold nor the three Eddies had ever voted for me, and under those circumstances the law was going to prevail, and we just got along famously after that.

Senator **Heflin**. All right, sir. Well, thank you, sir. We appreciate your being here and if you don't have anything else to say, we'll move on to the next nominee.

Judge **Marovich**. Thank you for your courtesy, sir.

Senator **Heflin**. All right, sir.

[Written questions and answers follow:]

ANSWERS TO QUESTIONS FOR JUDGE GEORGE M. MAROVICH, OF ILLINOIS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

1. JUDGE MAROVICH, THERE IS FREQUENTLY A CONFLICT BETWEEN THE DEEPLY-FELT CONSTITUTIONAL VIEWS OF A FEDERAL JUDGE AND THE CONSTRAINTS OF JUDICIAL PRECEDENT. HOW WOULD YOU RESOLVE THE TENSION BETWEEN PERSONAL JURISPRUDENCE AND PRECEDENT?

ANSWER: I BELIEVE IN THE RULE OF LAW. IF JUDGES WERE TO FOLLOW PERSONAL JURISPRUDENCE RATHER THAN PRECEDENT IT WOULD BE EXTREMELY DAMAGING TO THE IDEA OF RULE OF LAW. JUDGES ARE SUPPOSED TO BE DISPASSIONATE. THEY ARE NOT SUPPOSED TO VOTE THEIR HEARTS, THEIR PARTIES OR THEIR POLICY PREFERENCES. I WOULD CERTAINLY FOLLOW PRECEDENT REGARDLESS OF MY PERSONAL VIEWS.

2. JUDGE MAROVICH, THE PHRASE "JUDICIAL ACTIVISM" IS OFTEN USED TO DESCRIBE THE TENDENCY OF JUDGES TO MAKE DECISIONS ON ISSUES THAT ARE NOT PROPERLY WITHIN THE SCOPE OF THEIR AUTHORITY. WHAT DOES THE PHRASE "JUDICIAL ACTIVISM" MEAN TO YOU?

ANSWER: "JUDICIAL ACTIVISM" IS LIKE BEAUTY -- IT IS IN THE EYES OF THE BEHOLDER. TO ME, IT HAS TO DO WITH THE JUDGE'S ROLE IN THE JUDICIAL PROCESS. JUDGES ARE NOT LEGISLATORS. THEY ARE GIVEN THE AUTHORITY TO INTERPRET THE LAW OF THE LAND FROM REGULATIONS AND STATUTES TO THE CONSTITUTION ITSELF AND APPLY IT

TO SPECIFIC FACTS PRESENTED BY INDIVIDUAL CASES. OF COURSE, I BELIEVE THAT THE CONSTITUTION FORBIDS GOVERNMENT FROM DOING CERTAIN THINGS EVEN BY MAJORITY VOTE AND I WOULD, IN THOSE CIRCUMSTANCES, ENFORCE THE CONSTITUTION.

George M. Marovich

GEORGE M. MAROVICH

Senator HEFLIN. Now, we will have Roger J. Marzulla, a nominee for Assistant Attorney General, Lands and Natural Resources Division, U.S. Department of Justice, come forward. Mr. Marzulla, we are pleased to have you with us. Would you like to introduce any members of your family or friends that might be with you.

Mr. MARZULLA. Thank you, Senator. Unfortunately, my wife was unable to join us this morning. A number of members of the Land and Natural Resources Division are here, and rather than introduce all of them individually I'll just introduce them as a group, if I might.

Senator HEFLIN. Would you please stand, the members——

[Several people stood.]

Senator HEFLIN. Oh, my goodness.

Mr. MARZULLA. You see why I didn't want to go through the entire list, sir.

Senator HEFLIN. Well, we have got two that didn't stand. Maybe they would like to introduce themselves. [Laughter.]

Would you please stand and let me give you the oath?

Mr. MARZULLA. Certainly.

Senator HEFLIN. Do you solemnly swear that the testimony that you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MARZULLA. I do.

Senator HEFLIN. All right, sir.

What legal philosophy will you bring to the range of environmental issues facing the Lands Division?

TESTIMONY OF ROGER J. MARZULLA, OF CALIFORNIA, TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. MARZULLA. Senator, the American people have spoken very clearly that they want and demand an environment which is free from the dangers that our modern industrial society has created, and Congress has responded to that voice by passing a number of laws dealing with clean air, clean water, and the disposition of hazardous waste.

It is my job as a member of the executive branch charged with enforcing laws passed by Congress to see that there is a fair but firm enforcement of all of those provisions, both civil and criminal. It is that philosophy which I would implement in this position.

Senator HEFLIN. What do you see as the future of the Division, and in what direction do you plan to lead it during the rest of your tenure?

Mr. MARZULLA. The Division has grown dramatically over the past several years primarily with respect to the enforcement of the environmental statutes. I would undertake to accomplish a number of goals, all of which center around the environmental issues which are of such primary significance.

First, I would like to accomplish an implementation of the Superfund Amendments of 1986 which is true to what Congress intended in passing that statute, specifically to obtain prompt clean-up of the waste dumps across this Nation.

That implementation comes both through guidance that we are able to create in coordination with our client agency, the Environmental Protection Agency, and through the position that we take in the cases we file in court.

Second, I would like to pursue the criminal deterrent Congress has placed in the environmental statutes, criminal provisions which until 1983 were seldom, if ever, utilized to punish those who willfully violate the environmental statutes. We have made great strides in that regard and I would like to see more significant strides so that the message gets through to the regulated community that the flouting of environmental statutes will not be permitted.

Third, I would like to see us proceed with the clean-up of Federal facilities. Again, we have made strides in that regard and it would be my hope that we would continue to see that military and other federally-owned installations are cleaned up across this Nation.

Senator HEFLIN. How will you work with the Environmental Protection Agency and other Federal, State and local agencies to expedite the clean-up of the Nation's hazardous waste sites?

Mr. MARZULLA. We have excellent working relationships with our client agencies, Senator. We have daily contact with the Environmental Protection Agency, as well as with the Department of Interior, Department of Agriculture, and others who are involved in this effort to clean up hazardous waste sites as promptly as possible.

We have worked with EPA to create strategies, to create cases, and to educate the regulated community so that we are able not only to clean up the existing sites, but to preclude the creation of new sites.

As I previously mentioned, I consider the criminal deterrents to be a significant tool in that effort. And we have also established working groups with the Department of Interior to work towards clean-up on lands which are under its control. We are working closely with the Department of Agriculture likewise, and are working closely with the military services to see that their hazardous waste sites are also cleaned up.

Senator HEFLIN. There are criminal penalties in most of the environmental laws which you enforce. What priorities have you given to criminal enforcement, and what sort of results have you obtained?

Mr. MARZULLA. Criminal enforcement is at the top of my priority list, Senator. Before 1983, there was virtually no enforcement of the criminal provisions which were then on the books.

At that time, we created within the Land and Natural Resources Division a unit initially consisting of only a handful of lawyers which has now grown to a separate Environmental Crimes Section, so created by the Attorney General in 1987.

That Environmental Crimes Section has an enviable record. Since 1983, we have obtained approximately 270 convictions or pleas of guilty. We have recovered in excess of $6 million worth of criminal fines, and we have had assessed against the individuals in excess of 180 years of hard jail time.

We also worked very closely with the Sentencing Commission to obtain sentencing guidelines which set forth strong penalties for violation of the environmental statutes. We have worked closely with the investigators that are in the Office of Criminal Investigation at EPA. We have a strong working relationship with the Federal Bureau of Investigation. We have worked closely with State and local agencies to develop environmental criminal cases wherever they may exist, and I would certainly look forward to continued growth and continued success in that program.

Senator HEFLIN. Are you willing to commit to continued vigorous prosecution of hazardous waste violations, including assistance to EPA in the investigation of violations?

Mr. MARZULLA. Yes, sir, by all means. As I have just pointed out, that is at the top of our priority list. EPA's investigative staff has proved to be inadequate and one of the things we have been able to accomplish is to make arrangements with the Federal Bureau of Investigation to dedicate a significant number of man hours of its agents to assist in investigating environmental criminal infractions. We are looking for additional ways to harness the investigative resources of State and local officials as well.

Senator HEFLIN. As the top manager of an office experiencing tremendous growth, how will you ensure the highest professional standards in the conduct of the government's environmental litigation?

Mr. MARZULLA. Well, frankly, Senator, I think that the entire process starts with the quality of lawyers that we have been able to attract. Something like a college that develops a football dynasty, we have developed an enviable reputation as the Nation's largest environmental law firm and have, as a result, obtained an enormous in-pouring of résumés and interest from bright young environmental lawyers.

I have a seasoned and experienced team of leaders and managers within the Division who have done a superb job of managing the enormous growth that has occurred in the last 6 or 7 years, and we have, through a number of major training courses, through updating people on a routine basis on changes and accomplishments within the environmental field, been able to pull this group together and to make it a functioning and I think very effective organization.

We have, in short, in place the tools necessary to mold the new lawyers who are added to our ranks on an almost daily basis into a functioning and very effective team.

Senator HEFLIN. Thank you, sir. We appreciate your being here and your testimony.

Do you have any questions?

Mr. SHORT. We will have some questions in writing.

Senator HEFLIN. You'll have written questions. All of the hearings held today will be open for further written questions to be submitted, and we appreciate the expeditious answering and return of those questions with answers.

[Response to questions follows:]

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

18 MAR 1988

Honorable Joseph R. Biden
Chairman
Committee on the Judiciary
Washington, D.C. 20510

Dear Mr. Chairman:

I am enclosing the written answers to questions submitted to Roger J. Marzulla, Acting Assistant Attorney General, Land and Natural Resources Division, by members of your Committee, following Mr. Marzulla's confirmation hearing on February 29, 1988.

With the submission of this information, I believe Mr. Marzulla has responded in full to the Committee; therefore we hope for action in the near future on his nomination.

If I can be of any further help, please do not hesitate to contact me.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

Enclosure

QUESTION

Mr. Marzulla, you have served with the Land and Natural Resources Division since 1983, and have been the Division's Acting Assistant Attorney General since July, 1987. What in your opinion, have been the Division's major accomplishments during that time?

Answer

Since July, 1987 the Division has:

o Continued to strengthen its program for prosecuting environmental criminals. We have filed the largest environmental criminal case ever (against two corporations and 21 individuals), and obtained the first-ever conviction under the felony "knowing endangerment" provisions of RCRA.

o We have successfully defended the International Whaling Commission's moratorium on commercial whaling through negotiations and the appropriate use of the certification procedures.

o We have successfully negotiated an agreement with EPA for streamlining the procedure for referring environmental enforcement cases to the Division, ensuring more expeditious filing and prosecution of these cases.

o We have recovered record civil penalties in environmental cases under the Clean Air Act, Clean Water Act and RCRA.

o We have negotiated an agreement between the United States and Shell Oil Company for clean-up of Rocky Mountain Arsenal in Colorado. This clean-up is estimated to cost between $750 million dollars and $1 billion dollars.

Prior to 1983 virtually no environmental criminal cases had been prosecuted. In that year, we formed the Environmental

Crimes Unit which in 1987 became the Environmental Crimes Section. In the past five years, this corps of dedicated environmental criminal lawyers has obtained 344 indictments resulting in 277 convictions and pleas of guilty. Courts have assessed over $6.7 million dollars in fines, and sentenced the guilty to over 57 years of actual jail time to be served.

In this same period, we have filed in excess of 1,200 civil environmental enforcement cases, 300 in calendar year 1987 alone. We have obtained more than $400 million dollars in hazardous waste clean-ups since the enactment of Superfund.

I am extremely proud of this record of environmental enforcement.

QUESTION:

Mr. Marzulla, what do you consider to be the primary goals and priorities facing the Division if you are confirmed as Assistant Attorney General, and what action will you take in accomplishing these tasks?

My primary goal will be to send out the deterrent message that polluters will be dealt with firmly, both in the civil and criminal fields. To this end, I plan to continue emphasizing enforcement of the environmental criminal laws both through the Lands Division and through training and cooperative efforts with state and local law enforcement officials.

I will also emphasize the important deterrent role of civil environmental enforcement through the filing and vigorous prosecution of cases under statutes such as the Clean Air Act, Clean Water Act, RCRA and CERCLA.

Finally, I will see that the priorities of the diverse agencies which the Lands Division represents will be vigorously represented in court.

QUESTION: CONFLICTING JUSTICE DEPARTMENT ROLE IN SUPERFUND

The Justice Department recently settled a Superfund clean-up case at one of the most polluted sites in the country, the Rocky Mountain Arsenal site near Denver, Colorado. In your responses to the Committee's questionnaire you cited that settlement as one of the significant activities you have pursued.

An interesting aspect of that case is that the Justice Department was placed in a position of simultaneously acting on behalf of both the plaintiff (the EPA) and one of the defendants (the Army). I am informed that at one point in the proceedings, the Judge in the case had to ask the Justice Department attorney to clarify which side of the case he was representing at that time.

Since cases of this sort are expected to become more frequent in the future, what steps should the Justice Department take to ensure that the public's health and safety are adequately protected when the federal government is a defendant in a Superfund clean-up case?

Answer:

Federal facilities are required to comply with RCRA and CERCLA to the same extent as private parties. Hence, when the United States has contributed to pollution at a hazardous waste site, it is obligated to act appropriately to expedite clean-up. This willingness to come forward can often speed the clean-up especially when the United States takes the lead in designing and implementing the remedy. Indeed, the U.S. often takes interim measures to protect public health and safety at federal facilities even in the absence of litigation.

At the Rocky Mountain Arsenal site, for example, the Army is moving forward on 13 interim measures to protect the public's health and safety at the site. The Army has already spent $125 million dollars on these measures, prior to the signing of the settlement agreement. The proposed consent decree with Shell will result in a total expenditure estimated at from $750 million to $1 billion dollars, a large share of which will be contributed by the United States to implement a remedy designated by EPA. Such agreements provide better remedies much sooner than would extensive litigation.

It is perhaps worth noting that the court hearing the Rocky Mountain Arsenal case considered and rejected the contention that the Justice Department should not represent all of the federal agencies involved. Since EPA and the Army have the same legal obligation -- to see that the site is cleaned up -- there is indeed no conflict in that case.

How should conflicts between federal agencies on environmental issues be resolved? If the Justice Department cannot settle the conflict, should OMB or some other agency be called in?

Answer:

Federal agencies should settle their differences by negotiated inter-agency agreements. The Justice Department has a role in this process only to the extent that important legal issues are involved. The heads of all federal agencies report to the President who is ultimately responsible for resolving disputes among them. To the extent that the Justice Department can facilitate inter-agency cooperation, we are pleased to play that role.

Do you believe in the unitary executive theory which blocks the EPA from bringing suit against other federal agencies for clean-up costs?

Answer:

Yes, the Department of Justice has consistently endorsed the unitary executive theory for more than 50 years, based on the Supreme Court's reading of Article II of the Constitution. The President's use of his Article II supervisory powers to resolve disputes among his subordinates follows directly from the Framers' intent that the executive power of the United States be exercised in a "unitary and uniform" way. Myers, 272 U.S. 52, at 135 (1926). The basic principle underlying Article II of the Constitution is that the executive power is vested in a single person, the President, or as James Madison stated during the Great Debate of 1798, "the great principle of unity and responsibility in the Executive department." 1 Ann. Cong. 499 (1798).

Thus, the President is accountable to the American people for the activities of all executive agencies. For example, he has the ultimate duty to ensure that federal facilities comply with the environmental laws as part of his constitutional responsibility under Article II, even though executive branch agencies are subject to regulatory oversight in some instances. Accordingly, executive branch agencies may not sue one another, nor may one agency be ordered by another to comply with an administrative order without the prior opportunity to contest the order within the executive branch under such review processes as the President may establish.

This unitary executive theory was fully developed in testimony given by my predecessor before the House Energy and Commerce Committee's Oversight Subcommittee last year, building upon the analysis contained in a formal opinion issued by the Office of Legal Counsel in June 1978, which held that this doctrine prevented EPA from taking an inter-agency dispute to a court for resolution. Any other result would deprive the President of his ability to carry out his constitutionally mandated Article II duties. Moreover, such a dispute would not pose a "case or controversy" under Article III of the Constitution, since the structure of our government provides that such disputes should be resolved within the Executive Branch and not by the Judiciary.

Question

Would you tell the Committee what the largest pending criminal environmental case in Lands Division is and are defendants indicted for environmental crimes both individuals as well as corporations?

Answer

In terms of the number of defendants and types of alleged environmental law violations, the largest criminal environmental case pending in the Land and Natural Resources Division is United States v. Odfjell Westfal-Larsen (USA) and Baytank, Inc. On September 3, 1987, a grand jury in Houston, Texas returned an indictment against 21 defendants, including 19 individuals and two corporations. The indicted corporations are part of the largest private shipping line in Norway, which, in turn, is one of the ten largest in the world.

The defendants are charged with a large-scale conspiracy to dispose of hazardous waste from a chemical transfer and shipping facility at the port of Houston, which was run by the defendant corporation, Baytank. This facility consists of more than 43 chemical storage tanks with a total capacity in excess of 433,000 barrels. The alleged acts include violations of virtually every environmental statute: Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA/Superfund), and the Clean Water Act. This case is also the first criminal prosecution ever brought which includes charges of ocean dumping in violation of the Marine Protection, Research and Sanctuaries Act. It also alleged felony charges of knowing endangerment of human life or safety under RCRA.

A pre-trial hearing in this case was held on February 29, 1988. We anticipate that we will proceed to trial sometime this summer.

In response to your second question, concerning indictments of individuals and corporations for environmental crimes, the answer is yes, we prosecute individuals as well as corporations. In fact, two-thirds of our criminal environmental prosecutions are against individuals.

ISSUE 2 -- FEDERALISM AND STATE COASTAL MANAGEMENT PLANS

QUESTION

This Administration has strongly supported giving the states increased responsibility to address their own problems. One example of this delegation of responsibility is the Coastal Zone Management Act, which allows states to establish regulations to protect their fragile coastline areas.

However, the Justice Department has opposed state authority to regulate its own coastline in some cases, even when federal interests were not involved.

* What guidelines are used by the Department of Justice in deciding whether to argue that a federal regulation or law should preempt a state regulation or law?

Answer

The doctrine of federalism -- that states are sovereign and that they retain all powers not delegated by the Constitution to the Federal Government -- is central to our form of Government. This principle is embodied in the recent Executive Order on Federalism signed by the President on October 26, 1987, and the Lands Division is very respectful of that doctrine.

In the context of coastal zone management issues, as with all other matters handled by the Land and Natural Resources Division, we first conduct a careful examination of the factual context in which the issue is presented to us, most particularly during the course of litigation. We then examine whether the state action or activity conflicts with federal law or regulations or with the Constitution.

Two examples of our analysis are illustrative. In Chemical Waste Management v. U.S. Department of Commerce, No. 86-

624 (D.D.C.), we argued that the Marine Protection, Research and Sanctuaries Act (MPRSA) directly preempted the state of New Jersey's power to regulate certain aspects of ocean dumping. MPRSA provides that "[a]fter the effective date of this subchapter, no State shall adopt or enforce any rule or regulation relating to any activity regulated by this subchapter." 33 U.S.C. 1416.

At the heart, our argument reconciled Congress' direction that the Environmental Protection Agency was to be the agency to set standards for certain aspects of ocean dumping with the statutory scheme set forth in the Coastal Zone Management Act (CZMA). The CZMA, we argued, does not give the states regulatory authority in areas reserved to the federal government. Rather, it requires the federal government, in certain instances, to harmonize its actions with the standards enacted by the states and approved by the federal government in areas where the state has regulatory authority.

It is important to recognize that the source of the state's authority to set standards in the context of coastal zone management is not the CZMA. The state's coastal management program contains a series of mandatory enforceable policies, authority for which must be found in state law. Where the state has no authority, its coastal zone management plan contains no enforceable policies. This was the case with respect to the conditions contained in this particular New Jersey CZMA consistency review.

In Norfolk Southern v. Oberly, the constitutional implications of state action were at issue, rather than a question of preemption. This case involved the direct operation of the Commerce Clause, which prohibits the states from discriminating against interstate and foreign commerce or from unduly burdening such commerce. The question was whether Congress, in enacting the CZMA, authorized the states to act in an unconstitutional manner, in this case, by allowing the state of Delaware to impose an impermissible burden on interstate commerce. Our amicus curiae brief argued that the CZMA was not intended to extend state power in such a manner.

With respect to our participation in the appeal of this to the United States Court of Appeals for the Third Circuit, it is important to recognize that we did not address whether the particular provision of Delaware law was unconstitutional as applied. Rather, our argument focused solely on the legal effect of congressional enactment of the CZMA and the Secretary of Commerce's approval of a state coastal zone management program for purposes of constitutional scrutiny.

*** Isn't the Coastal Zone Management Act an example of the federalism this Administration is supposed to support? What is the justification for the Department's opposition to actions taken under state Coastal Management Plans that the federal government has approved?**

Answer

We strongly believe in the cooperative approach to management of coastal zone resources, as embodied in the Coastal Zone Management Act (CZMA), and have found that federal agency review for consistency with approved state coastal zone programs generally seems to be working in a manner complimentary to both state and federal interests. It is important to note that federal approval of a state coastal zone management program does not preclude examination of the applicability of that program to any particular federal activity. Indeed, Congress, in enacting the CZMA, recognized that there may be instances where "leeway" in the application of Section 307(c)(1)'s consistency obligations would be appropriate. This fact does not alter our commitment to a cooperative process. With very few exceptions, amicable and just resolutions of any differences of opinion regarding CZMA consistency obligations are reached through the administrative process. In this manner, the delicate state-federal balance embodied in the consistency provisions of the CZMA is maintained and both the federal and state governments are able to pursue their legitimate and lawful interests in coastal zone management.

There have been instances, for example in the Norfolk Southern case referenced in the previous question, where litigation has been necessary to protect the interests of the United States and to preserve the integrity of the CZMA cooperative system. In Norfolk Southern, we stated that mere approval of a state's CZM plan did not insulate the provisions of that plan from challenge arising under the Commerce Clause. This is not a course of action that we take lightly or unadvisably. While our objective clearly remains to promote resolution of disputes between the states and the federal government without resort to litigation, we recognize, on occasion, the necessity for the courts to serve as the final arbiter of what the law requires.

*** Do you see an inconsistency in supporting the "unitary executive" theory in Superfund clean-up cases at federal facilities, but ignoring it in Coastal Zone cases involving federally approved state plans?**

Answer

The doctrine of "unitary executive" holds that the President is obligated under Article II of the Constitution to direct his subordinates in order to "take Care that the Laws be faithfully executed." This obligation necessarily recognizes the President's authority to exert "general administrative control over those executing the law." Myers v. United States, 272 U.S. 52, 161-164 (1926). The President, as head of the Executive Branch, must "supervise and guide" executive officers in "their construction of the statutes under which they act in order to secure that unitary and uniform execution of the laws which Article II of the Constitution evidently contemplated in vesting general executive power in the President alone." Id. at 135.

On the other hand, conflicts in the administration of the Coastal Zone Management Act (CZMA) program most often involve differences between the states and the federal government, rather than conflicts solely between agencies of the executive branch of the federal government, as to the appropriate management of coastal resources under the law. As noted in our answers to your previous two questions, we attempt to reconcile state-federal differences through a cooperative federalism approach, without litigation, to the extent possible.

A potential source of concern regarding the federal response to state management of coastal resources could arise in those instances when a federal agency objects to the state's application of its federally approved coastal zone management program to a particular federal activity. The Department of Commerce is responsible for examining proposed state coastal zone programs under the CZMA and approving them. However, as noted in our answers to your previous questions, the existence of federal approval does not mean that a particular application of an approved state program to federal activities cannot be challenged. Rather, we try to insure that the state and federal governments work cooperatively together in examining the applicability of the state program to a particular proposed activity and endeavor to resolve any differences without resort to administrative appeals or litigation.

ISSUE 3 -- INTERPRETATION OF "CONSISTENCY" FOR COASTAL PLANS

QUESTION

In Secretary of the Interior v. California, 464 U.S. 312 (1984), the Supreme Court ruled 5-4 that consistency provisions in state coastal management plans do not apply to pre-drilling actions in allocating oil and gas leases (i.e., offering the leases for bid). The court ruled that leasing was merely a paper-pushing process which could have no direct impact on a state's coastal zone.

Soon after that ruling, Carol Dinkins, who was Assistant Attorney General for Land and Natural Resources Division at the time, testified before Congress that the Justice Department would interpret the Supreme Court ruling narrowly. It would only apply to federally conducted activities like oil and gas leasing, not those that were federally permitted like oil and gas drilling.

Since that time the Justice Department appears to have changed its interpretation to one that asserts that state consistency rules do not apply to federally-permitted activities in federal waters or to activities on land that could have an impact on the coastal zone.

* How do you explain this change in the Justice Department's position on this ruling? Which interpretation will you use? Why?

Answer

First, by way of background, let me review the decision in Secretary of the Interior v. California. In this decision, the Supreme Court ruled that Congress did not intend outer continental shelf (OCS) lease sales "to fall within the ambit" of Section 307(c)(1) of the Coastal Zone Management Act (CZMA). It was recognized by Congress at that time that any linkage of OCS lease sales to the CZMA would create "conflict with legislation already in existence concerning [Outer] Continental Shelf resources," for example, the Outer Continental Shelf Lands Act.

It is important to note that although pre-lease and lease sale activities are not subject to Section 307(c)(1), further exploration, development, or production activities on the OCS require formal consistency review pursuant to Section 307(c)(3)(B) of the CZMA. In this manner, the interests of the coastal states are fully protected at the points in the process when a leaseholder's activities could affect land or water uses in the coastal zone.

The Administration continues to adhere to the representations made by Deputy Attorney General Carol Dinkins before the House Committee on Merchant Marine and Fisheries in 1984 that the holding of this decision only applies directly to OCS lease sales. However, we did not say, either in our 1984 testimony or in subsequent correspondence with various congressional committees, that there were no defenses to consistency for all other federal activities. The Supreme Court did not decide this question and we have looked at it on a case by case basis, as particular questions regarding specific activities have arisen. The court, while not deciding the broader question, did note that, based on a reading of the legislative history of the act, the scope of that provision extends only to the coastal zone and not the OCS. We have consulted this same legislative history in subsequent cases.

As we have stated on numerous occasions, the balancing of federal and state interests under the CZMA is a delicate matter as is the balancing of interests protected by many other federal statutes. The best way to protect that balance is to handle each of these activities as it arises and that is what we have tried to do.

* Do you believe that the dumping of sewage sludge in federal waters will have no impact on state waters? Should state consistency regulations apply to this type of activity? Why or why not?

Answer

In the context of Coastal Zone Management Act (CZMA) litigation managed by the Land and Natural Resources Division, we have not had an opportunity to review the issue of sewage sludge dumping in federal waters, as identified in your question. Since our position would necessarily be dependent upon a careful examination of facts and issues presented to us in a specific factual context, primarily in the course of litigation, we are not in a position to hypothesize about the potential impacts of sewage sludge dumping you suggest. However, we must note that the CZMA is not the only federal statute that operates to assure adequate protection to coastal zone resources.

In the example you cite, compliance with requirements of the Marine Protection, Research and Sanctuaries Act would clearly be important. In addition, such federal environmental laws as the National Environmental Policy Act, Endangered Species Act, Marine Mammal Protection Act, Clean Water Act, and Outer Continental Shelf Lands Act apply to both state coastal waters and activities on the federal outer continental shelf. Through the administration of these environmental and resource management laws, there are ample opportunities for constructive and meaningful state/federal collaboration on important issues of resource protection, such as the one you have raised. There would also be opportunities for interstate collaboration on issues such as this one.

* Do you believe that a state, in trying to protect its coastal zone, has the right to regulate activities on land that will have an impact on its shore areas? Why or why not?

Answer

Under the Coastal Zone Management Act (CZMA), the "coastal zone" is defined to include coastal waters and the adjacent shorelands, strongly influenced by each other and in proximity to the shorelines of the several coastal states. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. See 16 U.S.C. 1453(1).

The regulations implementing the CZMA empower the states to define the landward limits of the coastal zone. The state's determination includes an examination, pursuant to Section 304 of the CZMA, of the effects of uses of shoreland on coastal waters -- a determination of causality by the states to which the federal government defers. In addition, the states have plenary authority to regulate land use on nonfederal lands within their boundaries. Thus, there is a wide measure of authority given to the states to examine activities on land that may impact its shore areas.

With respect to coastal activities on federal lands, federally owned lands are excluded as a matter of law from the CZMA's definition of the coastal zone. See 16 U.S.C. 1453(1). However, pursuant to Section 307(c)(1) of the CZMA, federal agencies conducting or supporting activities directly affecting the coastal zone must determine and assure consistency between their activities and the state programs for managing those areas, to the maximum extent practicable. The CZMA reaches those activities federal agencies conduct or support in the coastal zone or on land that would be in the coastal zone but for its status as excluded federal land. In each instance, the key consideration in determining the applicability of Section 307(c)(1) to such federal activities within the geographic confines of the coastal zone is the "directly affecting" test.

Senator **Heflin**. Thank you very much; we appreciate it.

Mr. **Marzulla**. Thank you, Senator.

Senator **Heflin**. The hearing is now adjourned.

[Whereupon, at 11:43 a.m., the committee was adjourned.]

EMMETT RIPLEY COX

Birth:	February 13, 1935	Cottonwood, Alabama
Legal Residence:	Alabama	
Marital Status:	Married	Ann Haas Cox 2 children
Education:	1953 - 1957	University of Alabama A.B. degree
	1956 - 1959	University of Alabama Law School LL.B. degree
Bar:	1959	Alabama
Experience:	1959 - 1964	Mead and Norman Associate
	1964 - 1970	Gaillard, Wilkins and Smith (later Gaillard, Wilkins, Smith and Cox) Associate (1964 - 1965) Partner (1965 - 1970)
	1970 - 1981	Nettles, Cox and Barker Partner
	1981 - present	United States District Judge Southern District of Alabama
Office:	Federal Courthouse Room 247 Mobile, Alabama 36602 205 690-2055	
Home:	276 Woodlands Avenue Mobile, Alabama 36607	

To be United States Circuit Judge for the Eleventh Circuit

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Emmett Ripley Cox (nickname "Rip").

2. Address: List current place of residence and office address(es).

My home address is 276 Woodlands Avenue, Mobile, Alabama 36607. My office address is Room 247 - Federal Courthouse, Mobile, Alabama 36602, and my mailing address is Post Office Box 3104, Mobile, Alabama 36652.

3. Date and place of birth.

February 13, 1935, Cottonwood, (Houston County) Alabama.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

My wife, Ann Haas Cox (maiden name, Ann MacKay Haas), is not employed.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

I attended the University of Alabama as an undergraduate from September, 1953, through the Spring of 1957. I received an A.B. degree in 1957.

I attended Law School at the University of Alabama from the Fall of 1956 through January, 1959. I received an L.L.B. degree in 1959.

I attended Law School on the "three-three" plan, pursuant to which I received an A.B. degree after completion of three years in the School of Arts and Sciences and one year in Law School. Upon completing two more years of Law School I received an L.L.B. degree.

6.. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

May, 1959 to September 1964 -- the law firm of Mead, Norman and Fitzpatrick in Birmingham, Alabama.

September, 1964, through December, 1969 -- the law firm of Gaillard, Wilkins, Smith and Cox, Mobile, Alabama.

January, 1970, through November, 1981 -- the law firm of Nettles, Cox and Barker, Mobile, Alabama.

December 2, 1981 to present -- United States District Judge, Southern District of Alabama.

I have not been an officer, director, partner, proprietor or employee of any other organization since graduation from law school except as follows: While engaged in the private practice of law in Mobile from 1964 through November of 1981, I would on occasion be named as a director of a corporation formed for a client because Alabama law at the time required that the initial board of directors of a corporation include at least three directors, and would also on occasion subscribe to one share of the stock of the new corporation since Alabama law at that time required that there be three subscribers. My practice was to resign the directorship and transfer the one share of stock to the client promptly after the corporation was organized. I do not have a list of such corporations available. I was not paid any compensation for serving on any such initial board of directors.

Additionally, I served as Assistant Secretary of some corporations which the firm of Nettles, Cox and Barker (and its predecessors) represented on a regular basis, because holding the office of Assistant Secretary enabled me to attest the signature of corporate officers on documents and affix the corporate seal to such documents. I had no other authority as Assistant Secretary, and was paid no compensation for serving as Assistant Secretary. All offices as Assistant Secretary were held sometime during the time I was a partner in Nettles, Cox and Barker (and its predecessors), and the firms in which I served as Assistant Secretary include the following business corporations: CuraCare, Inc., ElectroCardioGram Systems, Inc. and International Plumbing Company.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I was a member of the Alabama Air National Guard from 1958 through 1964, assigned to the 232nd Mobile Communications Flight (Light) at Dannelly Field, Montgomery, Alabama. My rank upon discharge was Airman First Class (E-4), and my serial number was AF24 585 949. I was honorably discharged in 1964.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I received a tuition scholarship as a freshman at the University of Alabama. While attending the University of Alabama I was a member of the following organizations: Omnicron Delta Kappa (National Senior Honorary), Bench and Bar Legal Honor Society, and the Farrah Order of Jurisprudence (scholastic honorary at the University of Alabama School of Law which preceded Order of the Coif there, and is limited to students in the top 10% of the graduating class of the Law School).

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

I am currently a member of The Alabama Bar Association, the Mobile County Bar Association, the Maritime Law Association of the United States, and the Federal Bar Association.

I have in the past been a member of the American Bar Association, the Southeastern Admiralty Law Institute and The Alabama Defense Lawyers' Association.

I served on the Grievance Committee of the Mobile Bar Association for a time in the 1970's and on various other committees of the Mobile Bar Association. I was a member of the American Bar Association's Subcommittee on Fidelity and Surety Law in the 1970's.

I served on the Program Committee for the fall Workshop for Judges of the Eleventh Circuit in 1987.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not belong to any organization which is active in lobbying before public bodies.

Organizations of which I am a member in addition to those mentioned in answering question 9 are: Trinity Episcopal Church, the Metropolitan YMCA of Mobile and the Harlequins (a social organization which hosts one dinner and one dance annually).

11. Court Admissions: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Alabama, February 6, 1959.

United States District Court for the Northern District of Alabama, September 9, 1959.

United States District Court for the Southern District of Alabama, October 1, 1959.

United States Court of Appeals, 5th Circuit, 1959.

United States Court of Appeals, 8th Circuit, July 2, 1979.

United States Court of Appeals, 11th Circuit, 1981.

Supreme Court of the United States, January 24, 1972.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on the issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have not published except for legal opinions written as a Judge, the citations to all of which are included in other portions of this questionnaire.

I have not written and delivered any speeches on constitutional law or legal policy. I have given a speech on the Bicentennial of the Constitution and I have given a speech on crime control, in each instance to civic organizations, but neither speech was in a complete written form -- each was given from notes. None of these speeches resulted in press reports.

13. Health: What is the present status of your health? List the date of your last physical examination.

Good. November 6, 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

United States District Judge, Southern District of Alabama. I was appointed to this position on November 18, 1981, and entered on duty on December 2, 1981.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Ten of the most significant opinions I have written (with the status of appellate review indicated in

parenthesis) are as follows. (Copies of those which are unpublished are attached).

a) Percy Leo Dobard, Petitioner, v. W. E. Johnson, Warden, Holman Correctional Institution, Respondent. Civil Action No. 84-0495-C. No appeal was taken from this decision.

b) Arthur Bernard Hayes, Petitioner, v. State of Alabama, and Joseph A. Oliver, Warden, et al., Respondents, 566 F. Supp. 108 (S.D. Ala. 1983). The Court of Appeals affirmed in an unpublished opinion.

c) Bennita N. Davis, et al., Plaintiffs, v. Mobile Consortium of CETA, et al., Defendants. Civil Action No. 79-0167-C. Appeal certified under Fed. R. Civ. P. 54(b); no decision rendered on appeal as yet.

d) Perry County Board of Education, et al., Plaintiffs, v. Perry County qua County, et al., Defendants. Civil Action No. 86-0221-C. No appeal was taken from this decision.

e) Sony Magnetic Products, Inc. of America, Plaintiff, v. Merivienti O/Y, et al., Defendants. 668 F. Supp. 1505 (S.D. Ala. 1987). An appeal was taken from this decision, but a decision on appeal has not yet been rendered.

f) Miller Industries, Inc., et al., Plaintiffs, v. Caterpillar Tractor Co., et al., Defendants. Civil Action No. 78-0070-C. This decision was affirmed on appeal, 733 F.2d 813 (11th Cir. 1984), reh. denied, 738 F.2d 451 (11th Cir. 1984).

g) Robert Hensley, et al., Plaintiffs, v. E. F. Hutton & Co., et al., Defendants, 113 F.R.D. 181 (S.D. Ala. 1986). No appeal was taken from this decision.

h) Celestine S. Lett, Plaintiff v. Board of School Commissioners of Mobile County, et al., Defendants. Civil Action No. 85-1223-C. No appeal was taken from this decision.

i) James Revette, et al., Plaintiffs, v. The International Association of Bridge, Structural and Ornamental Iron Workers, et al., Defendants. Civil Action No. 83-0190-C. The court's opinion and order issuing a preliminary injunction was affirmed on appeal, 740 F.2d 892 (11th Cir. 1984).

j) MacMillan-Bloedel, Inc., Plaintiff, v. Fireman's Insurance Company, et al., Defendants, 558 F. Supp. 596 (S.D. Ala. 1983). No appeal was taken from this decision.

(2) A short summary of and citations for all appellate opinions where my decisions were reversed or where my judgment was affirmed with significant criticism of my substantive or procedural rulings follows:

(a) Alabama v. Evans, 461 U.S. 230, 103 S. Ct. 1736, 75 L.Ed.2d 806 (1983). Respondent Evans filed a second petition for a writ of habeas corpus on the eve of his scheduled execution, and requested a stay of execution pending disposition of the petition. I granted a temporary stay because, in my opinion, there was not adequate time to address the claims in the petition which had not been presented in a prior petition. The Court of Appeals for the Eleventh Circuit denied the State's motion for an order vacating the stay. The State applied to the United States Supreme Court for an order vacating the stay, and the application was granted.

(b) Ladies Center of Mobile, Inc. v. City of Mobile, No. 83-7246 (July 5, 1983). Copies of my opinion and order in this case are attached, and my opinion summarizes the facts. The case was appealed, and while the appeal was pending the Supreme Court decided a similar case -- City of Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 103 S. Ct. 2481 (1983). The Court of Appeals then remanded the case for further consideration in light of the Supreme Court's intervening decision.

(c) Dickinson v. Alabama State Employment Service, No. 83-7563 (April 26, 1984). The unpublished opinion of the Court of Appeals for the Eleventh Circuit, a copy of which is attached to this answer, adequately summarizes its reversal in part of my order dismissing appellate's complaint.

(d) Beasley v. Heckler, No. 82-7192 (June 5, 1984). In this case, the plaintiff sought review of the decision of the Secretary of Health and Human Services denying plaintiff's application for disability benefits under the Social Security Act. The Secretary had relied upon certain regulations, rather than evidence adduced at a hearing, to rebut plaintiff's prima facie case of entitlement, and the Administrative Law Judge denied benefits on the basis of that rebuttal. Upon recommendation of a Special Master that reliance upon the regulations was error, I remanded the case to the Secretary for further proceedings. In an unpublished opinion, the Court of Appeals for the Eleventh Circuit remanded the case with instructions to remand to the Secretary for proceedings consistent with an intervening Eleventh Circuit decision which upheld use of the regulations to rebut a prima facie case of entitlement to disability benefits. A copy of the opinion of the Court of Appeals is attached.

(e) McCorkle v. Johnson, No. 84-7631 (July 26, 1985). The unpublished opinion of the Court of Appeals for the Eleventh Circuit, a copy of which is attached to this answer, adequately summarizes the basis upon which it vacated and remanded my dismissal of a prisoner's pro se § 1983 complaint.

(f) Hall v. Allen, No. 84-7688 (August 6, 1985). The unpublished opinion of the Court of Appeals for the

Eleventh Circuit, a copy of which is attached to this answer, adequately summarizes the Court of Appeals' reversal in part of my order dismissing this § 1983 prisoner's complaint.

(g) Furness Withy (Chartering) Inc., Panama v. World Energy Systems Associates, Inc., 772 F.2d 802 (11th Cir. 1985). This was a complex case. The facts of the case are summarized by the Court of Appeals in its published opinion, but I respectfully suggest that footnote 12 implies that the Court erroneously assumed that HSC-TCI enjoyed the benefit of the proceeds of the sale of the coal. My decision was reversed in part.

(h) Richardson v. Heckler, No. 85-7284 (November 13, 1985). The Secretary of Health and Human Services denied plaintiff's application for disability benefits, and I affirmed the decision of the Administrative Law Judge. In an unpublished opinion, a copy of which is attached to this answer, the Court of Appeals for the Eleventh Circuit reversed with instructions to remand the case to the ALJ so that proper weight could be given to the testimony of plaintiff's treating physician.

(i) Carbon Processing Co. v. Lapeyrouse Grain Corp., 779 F.2d 1541 (11th Cir. 1986). In this case, Carbon Processing, a broker, sued Lapeyrouse Grain to recover a finder's fee on the sale of Lapeyrouse's equipment. I adopted the recommendation of the Magistrate that the finder's fee contract was void because Carbon Processing did not have a certificate authorizing it to transact business in Alabama as required by Alabama law. The Court of Appeals for the Eleventh Circuit, in a published opinion, reversed, holding that Alabama law as applied was an unconstitutional impediment to interstate commerce.

(j) Allstate v. James, 779 F.2d 1536 (11th Cir. 1986). The published opinion of the Court of Appeals for the Eleventh Circuit adequately summarizes the circumstances upon which the Court reversed my dismissal of the cross-claim filed by the mortgagee against the mortgagor.

(k) James v. United States Dep't. of Housing and Urban Development, 783 F.2d 997 (11th Cir. 1986). In this case, I dismissed as untimely a petition for attorney's fees under the Equal Access to Justice Act. On the basis of "clarifying legislation" enacted subsequent to my decision, the Court of Appeals for the Eleventh Circuit reversed the dismissal.

(l) Nelson v. City of Saraland, No. 84-7683 (March 24, 1986). Adopting the recommendation of the Magistrate, I entered summary judgment in this § 1983 suit alleging that defendants intentionally deprived plaintiff of substantive due process rights. My decision was based upon a panel decision of the Court of Appeals for the Eleventh Circuit, which decision was subsequently modified by the Court en banc so as to undermine the basis of my decision. The unpublished opinion of the Court of Appeals is attached to this answer.

(m) Miller v. Gibson, No. 86-7144 (October 17, 1986) (Per Curiam panel opinion), and No. 86-7144 (March 23, 1987) (Per Curiam panel opinion suggesting rehearing en banc). My dismissal of this § 1983 prisoner's complaint was affirmed on original hearing, and vacated on rehearing. The two opinions of the Court of Appeals for the Eleventh Circuit, copies of which are attached to this answer, adequately summarize the relevant circumstances of the remand.

(n) Wilson v. Jones, 827 F.2d 716 (11th Cir. 1987). The published opinion of the Court of Appeals for the Eleventh Circuit summarizes the facts. The Court reversed my dismissal of this habeas petition for failure to exhaust. It had been my opinion that State Courts had not addressed the merits of the claims asserted.

(3) The more significant opinions which I have written on federal constitutional issues are included in answers to other parts of this question. Habeas corpus cases from State Court all involve federal constitutional questions, and I have decided dozens of such cases.

I recall no significant opinions involving state constitutional issues.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I was a member of the Mobile County Republican Executive Committee for several years during the late 60's and early 70's, at times by appointment and at times by election. I am uncertain as to whether this is the kind of "public office" contemplated by the question, but technically it may be a "public office" under Alabama law. I do not recall the exact dates on which I was a member of this Committee, and no longer have a file from which I can determine the exact dates.

I have not held any other public office except for my current judicial office.

I have had no unsuccessful candidacies for elective public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

I became an associate in the firm of Mead and Norman (later Mead, Norman and Fitzpatrick), 2121 Building, 2121 8th Avenue, Birmingham, Alabama, in

May, 1959, and remained with that firm as an associate until September, 1964. In September, 1964, I became an associate in the firm of Gaillard, Wilkins and Smith, 157 North Conception Street, Mobile, Alabama. In 1965 I became a partner in the firm, and it subsequently changed its name to Gaillard, Wilkins, Smith and Cox.

In January, 1970, I formed a partnership for the general practice of law with Bert S. Nettles of Mobile under the name of Nettles and Cox, which at the time of my appointment to the bench was known as Nettles, Cox and Barker, and I was a partner in that firm through November, 1981.

I have not served as a clerk to a judge and have never practiced alone.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The general character of my practice changed over the years.

From May, 1959, to September, 1964, while associated with the firm of Mead, Norman and Fitzpatrick, I handled litigation exclusively.

Most of the firm's clients were insurance companies, although on occasion the firm handled litigation for parties other than insurance companies. A majority of the cases which I personally handled involved the defense of property insurers in suits on policies (being claims arising out of fire, lightning, windstorm, landslide, etc.) and cases involving coverage questions under liability insurance policies. During my association with the firm I was involved as sole counsel or associate counsel in the handling of numerous cases at both the trial and appellate level.

From September, 1964, until January, 1970, while with Gaillard, Wilkins, Smith and Cox, the character of my practice changed. A majority of the firm's clients were corporate and other business firms, including some large business corporations and some modest business firms. My practice with this firm involved both office practice in the representation of business clients and the handling of litigation for individuals, business clients and, on occasion, insurance companies. I personally handled a substantial percentage of the litigation which this firm handled.

When Nettles & Cox was formed in 1970 the firm handled a great deal of litigation, and I personally handled a substantial amount of this litigation. During the last few years of my practice the firm developed a substantial insurance defense practice and a substantial office practice, representing corporations, partnerships and sole proprietorships in a variety of matters. Due to the fact that I had more extensive experience in the office practice areas than the other partners and associates in the firm, (whereas Bert Nettles, for example, had more experience in litigation than I did) I devoted more of my time in the last five years of my practice to office practice and less to litigation, although I still devoted a substantial amount of my time to litigation.

My clients during those years included a major surety company (for which I handled some fifteen litigated matters in the last five years of my practice), general contractors in the construction business (for which I handled business matters and litigation), maritime firms (for which I handled some admiralty litigation), physicians and surgeons, corporations in the health care field, and property and liability insurance companies.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.

Regularly. The frequency of such appearances declined, however, for the reasons noted in my answer to subpart b of this question.

2. What percentage of these appearances was in:

(a) federal courts;

(b) state courts of record;

(c) other courts.

Federal Courts, 35%

State Courts of Record, 60%

Other Courts, (Probate)5%

3. What percentage of your litigation was:

(a) civil;

(b) criminal.

Civil 100%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried to verdict or judgment approximately 30 cases in the last five years of my practice, including approximately 10 as sole counsel, 10 as chief counsel, and 10 as co-counsel.

5. What percentage of these trials was:

(a) jury;

(b) non-jury.

Jury, 90%

Non-jury, 10%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The litigation which I handled was almost exclusively private-party litigation, and therefore as a general rule was "significant" only to my client and me. The following cases, however, are representative:

a) Dallas County v. Commercial Union Assurance Company, Ltd., et al., 286 F.2d 388 (5th Cir. 1961).

Dallas County was represented by William McLean Pitts (now deceased), T. G. Gayle and J. E. Wilkinson, Jr. (current address unknown). The defendants were represented by Joseph S. Mead, 2121 Building, 2121 8th Avenue North, Birmingham, Alabama (now deceased), John Randolph Smith (current address unknown), and me.

The clock tower of the Dallas County Courthouse at Selma, Alabama, collapsed into the courtroom on a Sunday morning. No one was injured, but damage to the Courthouse exceeded $100,000.00. The County sued its fire and lightning insurers, claiming that a lightning strike had triggered the collapse. The insurers contended that the tower collapsed of its own weight. An examination of the tower debris showed the presence of charred timber, and the State Toxicologist testified that this was evidence that lightning had struck the tower. The insurers introduced in evidence a copy of the local newspaper for June 9, 1901, which described a fire in the tower on the morning of June 9, 1901. This

1901 fire, it was argued, explained the presence of charred timbers in the tower.

Numerous experts were called as witnesses.

The jury found that lightning did not cause the collapse, and judgment was entered accordingly.

Dallas County appealed, asserting as error the admission in evidence of the newspaper account of the 1901 fire. The Court of Appeals for the Fifth Circuit held that the newspaper was admissible.

The Court of Appeals treated the case as one of first impression, and the decision is probably the leading case in the United States on the application of the hearsay rule.

I did not participate at the trial stage in the examination of witnesses, argument, etc., and played the role which is typical of a first year lawyer -- assisting in preparation for trial, indexing testimony, etc.

On appeal, however, I was the sole author of that part of the brief dealing with the admissibility of the newspaper, and orally argued that issue as co-counsel with Joseph S. Mead in the Court of Appeals.

The case was tried in 1960 in the U. S. District Court for the Southern District of Alabama, and Judge Daniel H. Thomas was the Trial Judge.

b) Smith-Kelly Supply Company, Inc. v. General Construction Corporation and Travelers Indemnity

Company, 399 F. Supp. 184 (S.D. Ala. 1975), affirmed without opinion 519 F.2d 1087 (5th Cir. 1975).

The plaintiff was represented by Ben F. Stokes, III, 160 Congress Street, Mobile, Alabama 36603 (205-433-1831) and E. Graham Gibbons (now deceased). I was sole counsel for the defendants.

Smith-Kelly had furnished materials to General Construction Corporation, the general contractor, for use in the construction of a shopping center. The general contractor became defunct. Smith-Kelly sued General Construction and The Travelers, its surety, on the general contractor's performance bond.

The general contract provided that the general contractor would furnish all materials, but did not expressly provide that the general would pay for the materials.

The defendants contended that a materialman without a lien had no right of action on a performance bond conditioned upon faithful performance of the contract where the general contract did not expressly provide that the general would pay for materials furnished for the project. The District Court agreed, and granted the defendants' motion for summary judgment. The Fifth Circuit affirmed.

The case laid to rest the question of the surety's liability on this bond to this plaintiff and a dozen other unpaid materialmen (having in the aggregate over

$200,000.00 in claims) and involved a question of Alabama law not clearly settled at the time. While a related case also went to the Fifth Circuit, the result was the same and none of the sub-contractors and materialmen successfully asserted claims on this bond.

I was sole counsel for the defendants at both the trial and appellate levels.

The Court was the United States District Court for the Southern District of Alabama and the Trial Judge was Judge W. B. Hand. The District Court judgment was in 1975.

c) Wood Lumber Company, Plaintiff v. Seaboard Airline Railroad, Defendant; Standard Reliance Insurance Company, Washington County Insurance Company, Lititz Mutual Insurance Company, Implement Dealers Mutual Insurance Company, and Insurance Company of St. Louis, Intervenors.

Wood Lumber Company was represented by Al G. Rives, 3415 Pine Ridge Road, Birmingham, Alabama (205-328-8141). Seaboard Airline Railroad was represented by Drayton Scott of the Birmingham Bar (now deceased). I was sole counsel for the insurance companies who were Intervenors.

Seaboard Airline's locomotive jumped a spur track and went through the wall of a department store owned by Wood Lumber Company. No one was injured, but Wood Lumber Company's building was damaged. Wood Lumber

Company filed a claim against its property insurers. Wood Lumber and its property insurers were unable to agree as to the amount of the loss and damage; Wood Lumber contended that the structural integrity of an entire wall of the department store was in question and had been damaged, whereas its property insurers contended that the damage was confined to what it would cost to repair the hole in the wall.

When the parties were unable to agree as to the amount of the damage, Wood Lumber proceeded to file suit against Seaboard Airline, alleging negligence, and put its property insurers on notice that it would proceed against them if it did not recover all of its damages from Seaboard Airline.

Under the law of Alabama, the property insurers were placed in a perilous position. Not having paid their insured, Wood Lumber could contend that its insurers had no right of subrogation against Seaboard Airline. On the other hand, Wood Lumber Company would also be free to sue its insurers after verdict against Seaboard Airline and assert that the damages which it suffered were in excess of any such verdict against Seaboard.

In order to remove the insurers from this position, I filed a petition for leave to intervene and file a petition for declaratory judgment in the action filed by Wood Lumber against Seaboard Airline. In the proposed petition for a declaratory judgment, the insurers admitted liability to Wood Lumber, asked the Court to determine the amount of the damages under the policy, asserted a right of subrogation against Seaboard Airline, and asked the Court to fix the amount of their liability to Wood Lumber Company and give them a judgment over in that amount against Seaboard Airline.

The petition for leave to intervene was granted, and the case was tried to a jury. The jury fixed damages to which Wood Lumber was entitled under the policies at an amount equal to the cost of repair of the hole in the wall, fixed damages to which Wood Lumber was entitled from Seaboard Airline (at an amount approximately twice the other figure) and found that Seaboard Airline was liable for the damages.

The Trial Judge entered a judgment in favor of Wood Lumber against the insurers and a judgment in favor of Wood Lumber against Seaboard Airline, but ordered that the judgment against the insurers was due to be satisfied of record if the judgment in favor of Wood Lumber Company against Seaboard Airline was paid.

The litigation was handled in a way which strategically preserved the insurers' right of subrogation and precluded the possibility that damages fixed in the claims on the policies would be greater than damages fixed in the claim against the tortfeasor.

The case was tried in the United States District Court for the Northern District of Alabama in 1962 and Judge H. H. Grooms was the Trial Judge.

d) Boat River and Canal, Inc., a corporation, vs. THE TUG RACHEL, her engines, hull, appurtenances, etc., in rem and Cross State Towing Company, in personam.

I represented the plaintiff, Boat River and Canal, Inc. The tug RACHEL and Cross State Towing Company were represented by G. Hamp Uzelle, III, 28th Floor, First National Bank Building, Mobile, Alabama 36602 (205-432-5511).

Boat River and Canal contracted with Cross State Towing Company to tow a barge and its cargo from Wilmington, North Carolina, to Mobile, Alabama. The barge, while being towed by the defendant's tug RACHEL, sank in the Gulf of Mexico, and the barge and its cargo were a total loss. The plaintiff contended that the sinking was the result of damage sustained by the barge when the tug RACHEL negligently allowed it to collide with the fender system of the Sanibel Causeway Bridge near Fort Meyers, Florida or as a result of damage sustained by the barge after it was run aground following the collision with the bridge. Alternatively, the plaintiff contended that if the barge was unseaworthy prior to the collision and grounding because of its condition or because of the way it was loaded (as the defendant contended) that the defects rendering it unseaworthy were known or apparent to the defendant and the defendant was negligent in proceeding to undertake the voyage. The tug and its owner contended that the sinking was solely the result of the unseaworthy condition of the barge and the fact that it was improperly loaded.

Lee County, Florida, the owner of the Sanibel Causeway, also asserted a claim against the tug and its owner for damage to the fender system of the Causeway, and that case was consolidated with Boat River's case seeking damages for loss of the barge and its cargo. Lee County was represented by Attorney Robert H. Smith, 3263 Cottage Hill Road, Mobile, Alabama (205-476-4493).

Cross State Towing counter-claimed for towing charges due from Boat River.

The case involved complex questions of admiralty law as it relates to contracts of towage, limitation of liability under the Limitation of Liability Act (46 U.S.C. § 181 et seq.) and the complex factual situations.

After extensive discovery by all parties, and a pretrial conference, all claims were settled on the eve of trial.

I was the only counsel for Boat River and Canal, Inc. who actually participated in the handling of the case after the initial interview with the client.

The case was settled in 1979 and was before the United States District Court for the Southern District of Alabama, at Mobile, and Judge Virgil Pittman was the Trial Judge.

e) R. O. Stidham v. State Farm Fire & Casualty Co., Defendant.

The plaintiff Stidham was represented by John D. Richardson, III and Alton R. Brown, Jr., 1495 University Boulevard, Mobile, Alabama (205-344-7744). I was chief counsel for the defendant State Farm and Bert S. Nettles, 3311 First National Bank Building, Mobile, Alabama 36602 (205-432-8786) was associate counsel for the defendant State Farm.

Stidham's home, which was a huge, old homeplace, burned and was a constructive total loss. He made a claim against his fire insurer, State Farm. Stidham had replacement cost coverage conditioned upon actual replacement. Stidham and State Farm were unable to agree upon the amount of the loss, and Stidham filed suit. State Farm answered, denying liability because of an alleged misrepresentation in the application for the policy, asserting that the amount of the loss was substantially less than the amount claimed, and asserting that the right to recover replacement cost (which greatly exceeded the market value) was conditioned upon actual replacement. The plaintiff

Stidham had neither replaced the dwelling nor committed to replace it.

Whether or not replacement was a condition precedent to the recovery of replacement cost was one of first impression in Alabama.

The Trial Judge found the misrepresentation not to be material as a matter of law, and directed a verdict for the plaintiff on that question. The Judge, at my request, had the jury fix both the market value of the dwelling and the replacement cost. The Judge entered a judgment for the market value and fixed the amount of judgment to be entered for the cost to replace the dwelling if and when the dwelling was replaced and it could be established that the plaintiff had incurred replacement costs equal to the amount fixed by the jury as the cost to replace. The market value, as fixed by the jury, was a fraction of what the plaintiff contended the market value was.

The case was tried in 1971 in the United States District Court for the Southern District of Alabama, at Mobile. The Trial Judge was Judge W. B. Hand.

f) Grace B. DuValle v. William J. Hearin, Jr. and Mobile News, Inc.

The plaintiff DuValle was represented by M. A. Marsal, 200 Church Street, Mobile, Alabama 36602 (205-432-6685), R. B. Wilkins, 157 North Conception Street, Mobile, Alabama 36603 (205-432-0738) and myself.

The defendant William J. Hearin, Jr. was represented by William DeWitt Reams, Pillans-Roberts Building, 3662 Dauphin Street, Mobile, Alabama 36608 (205-344-4721) and David W. Green (current address unknown). The defendant Mobile News, Inc. was represented by Charles B. Arendall, Jr. and W. Ramsey McKinney, Jr., 30th Floor, First National Bank Building, Mobile, Alabama 36602 (205-432-5511).

The plaintiff agreed to sell her 28,350 shares of stock in The Mobile Press-Register, Inc. (owner of the local newspaper) for $17.00 per share. The complaint charged that the defendant herein, acting as agent for the other defendant, made fraudulent and misleading statements to the plaintiff's husband for the purpose of inducing her to sell her stock for less than its actual value and that the plaintiff was induced thereby to sell her stock to Mobile News, Inc. for less than its actual value. The complaint included several causes of action, some of which were predicated upon common law fraud and some of which were predicated upon violations of the Securities Act of Alabama. The jury returned a verdict for the plaintiff for $200,000.00.

The case presented, as a question of first impression in Alabama, the issue of whether or not a defrauded seller (as distinguished from a defrauded buyer) was given a civil remedy by the Securities Act of Alabama. The trial court held that a defrauded seller was given such a remedy by the Act, and submitted the question to the jury.

The case was appealed to the Supreme Court of Alabama, where it was briefed and argued. The case was settled for $200,000.00, however, prior to the time the Supreme Court decided the case.

My role in the trial court included sole responsibility for preparation for trial, discovery and other pretrial motions, etc. At the trial, I assisted M. A. Marsal, who was chief counsel for the plaintiff DuValle, but Mr. Marsal examined the witnesses and argued the case. On appeal I was the sole author of the brief and argued the case jointly with Mr. Marsal.

The suit was against the publisher and part owner of the only newspaper of general circulation in Mobile at that time and involved a question of first impression under the Alabama Securities Act.

The case was tried in 1968 in the Circuit Court of Mobile County. The Trial Judge was Judge Roy Mayhall.

g) Henry A. Stikes, Sr. as Trustee in Bankruptcy of Simms Brothers Towing Co., Inc. v. Citicorp Leasing, Inc. and First National Bank of Houma.

I was chief counsel for the plaintiff Trustee in Bankruptcy and Robert H. Allen, Suite 2508, First National Bank Building, Mobile, Alabama (205-432-1303) was associate counsel. G. Hamp Uzelle, III, 30th Floor, First National Bank Building, Mobile, Alabama 36602

(205-432-5511) was counsel for the defendants Citicorp and First National.

Citicorp and First National filed claims in bankruptcy, claiming to be secured creditors as to three barges owned by the bankrupt which had been sold at auction by order of the District Court. On behalf of the Trustee, I filed objections to these claims and a complaint for affirmative relief in the Bankruptcy Court, asserting that Citicorp and First National had no maritime lien, that any lien which they had was void or voidable under the Bankruptcy Act, and that the Trustee (not the defendants) was entitled to collect the proceeds of the sale of these barges from the District Court sitting in Admiralty. Additionally, I asserted on behalf of the Trustee a complaint seeking affirmative relief based on the fact that the defendants had received voidable preferences in setting off claims against the bankrupt's checking account, collecting accounts receivable, etc.

The initial battle was in the United States District Court sitting in Admiralty. That Court granted our motion to stay proceedings in the Admiralty Court pending a hearing on these matters in the Bankruptcy Court. After this stay, the matter was settled in the Bankruptcy Court under terms which enabled the Trustee to recover approximately $239,247.11 for the bankrupt's estate.

The case involved complex questions of law relative to the respective roles of the Admiralty Court and the Bankruptcy Court in bankruptcy matters and complex questions of law and fact under the Bankruptcy Act.

I was chief counsel for the Trustee, and as such handled the pleadings, oral arguments and ultimately negotiations for settlement.

The objections to the claims and the complaint for affirmative relief on behalf of the Trustee proceeded in the United States District Court for the Southern District of Alabama, in Bankruptcy, with Judge Will G. Caffey, Jr. presiding, and the United States District Court for the Southern District of Alabama, in Admiralty, with Judge Daniel H. Thomas presiding. The settlement was approved by the Court in 1978.

h) Vankel, Inc. v. Dicon, Inc. and The Travelers Indemnity Company. Affirmed without opinion by the Court of Appeals for the Fifth Circuit.

The plaintiff Vankel, Inc. was represented by Maury Friedlander, 955 Downtowner Boulevard, Mobile, Alabama 36609 (205-344-1663). I was chief counsel for the defendants. Associate counsel for the defendants was E. Elliott Barker, 3311 First National Bank Building, Mobile, Alabama 36602 (205-432-8786).

Vankel, Inc., as owner, had contracted with Dicon, Inc., as general contractor, for the completion of construction of two commercial buildings. The original contractor had defaulted. The plaintiff Vankel, Inc. sued Dicon, Inc., and The Travelers, its surety, on the performance bond, alleging defects in the construction and failure to complete the project.

The case involved many complex questions of law and fact. The critical issue proved to be whether or not expenses incurred by the president of the plaintiff individually in completing the construction were recoverable by his corporation. Other issues included whether or not the plaintiff met the burden of proof in establishing which of the construction defects were the fault of the original contractor and which were the fault of Dicon, Inc., the completion contractor.

At the close of the plaintiff's case, the Trial Judge directed a verdict for the defendants. The defendants appealed and the Fifth Circuit affirmed.

I made the opening statement, questioned most of the witnesses, made all legal arguments, etc. Mr. Barker's role, as associate counsel, was to assist in preparation for trial, question witnesses, etc.

The case was tried in 1976 in the United States District Court for the Southern District of Alabama at Mobile. Judge W. B. Hand was the Trial Judge.

i) Joseph Williams and Mary Williams v. Federal Housing Administration.

I was sole counsel for the plaintiffs. The Federal Housing Administration was represented by Vernol Jansen, United States District Attorney (present address unknown).

The Williams had purchased a home from the Federal Housing Administration, a home which the Federal Housing Administration had acquired on foreclosure of a mortgage. In the contract of purchase and sale, the Federal Housing Administration included in the typewritten provisions express written warranties as to the condition of the heating and air conditioning system in the dwelling. The Williams closed the purchase, and took possession of the dwelling, after which they discovered that the heating and air conditioning system was not operable, that a new compressor was required, etc. The Williams then asserted a claim against the Federal Housing Administration. The Federal Housing Administration denied liability, relying on fine print in the printed portion of the contract which appeared on the reverse side. This fine print provided, in substance, that if any warranties made by them were breached, they could make good the warranty or, alternatively, in their discretion, they could decide not to perform their warranty obligations. The Federal Housing Administration notified the plaintiffs that they would assume no responsibility for the fact that the heating and air conditioning system was not operable.

Suit was filed in the United States District Court, claiming damages for breach of warranty made in the contract. The Federal Housing Administration answered and denied liability based on the provision appearing in fine print on the reverse side of the contract.

There were a number of pretrial motions, including a pretrial motion for summary judgment on behalf of the defendant. Ultimately, the case was tried on the merits to the Court without a jury. The Court found in favor of the plaintiffs, awarding the plaintiffs an amount equal to the sum required to repair the defective heating and air conditioning system.

Average citizens, having a very modest claim against an agency of the Federal Government, were given a full-dress hearing in the United States District Court, after which they were awarded the relief prayed for. The question of the Government's right to disclaim liability based on the fine print provision -- notwithstanding an express warranty -- involved a question of law which was novel and not clearly settled.

The case was tried in 1968 in the United States District Court for the Southern District of Alabama, Judge Daniel H. Thomas was the Trial Judge.

j) Veda T. Britt v. All American Assurance Company of Louisiana. 333 So.2d 629 (S. Ct. of Miss. 1976).

The plaintiff Veda T. Britt was represented in the trial court by Harry R. Allen, 31st Avenue, Gulfport, Mississippi 39501 (601-864-4011) and myself. The defendant All American was represented by Dorrance

Aultman, III (current address unknown). On appeal, All American was represented by Mr. Aultman, and J. F. Janecky, 3311 First National Bank Building, Mobile, Alabama 36602 (205-432-8786) and I were co-counsel for the plaintiff Britt.

This was a suit on a policy of insurance seeking to recover benefits for the accidental death of the plaintiff's husband under a policy providing benefits for death ". . . from bodily injury caused solely by external, violent and accidental means . . ."

The circumstances of the decedent's death were mysterious. His whereabouts were unaccounted for over a week-end until he was found lying in a puddle of water near some woods. It was cold and raining. He was taken to Ochsner Foundation in New Orleans, where he died, and the diagnosis was that the cause of death was exposure.

Whether or not death by exposure was accidental death within the meaning of the policy was a case of first impression in Mississippi. The Trial Judge instructed the jury that the plaintiff had the burden of proving the circumstances surrounding the decedent's exposure and the burden of proving that the decedent's exposure was unintended. The Court's charge was virtually the equivalent of a directed verdict. The jury found for the defendant.

On appeal, the Supreme Court of Mississippi reversed, holding that the plaintiff was entitled to a presumption that death was through accidental means upon proof that death was through violent and external means, and that death from exposure was, as a matter of law, death from violent and external means.

Mrs. Britt was the beneficiary of a number of policies providing coverage for the accidental death of her husband. The decision in the All American case prompted favorable settlements in all cases filed on Mrs. Britt's behalf in which the sole issue was accidental death or not.

My role in the trial court in the All American case was that of associate counsel, and examination of witnesses, argument, etc. was handled by Harry Allen. On appeal, I was chief counsel, co-authored the brief with J. F. Janecky, and split oral argument in the Supreme Court of Mississippi with J. F. Janecky.

The case was tried in 1976 in the Circuit Court of Pearl River County, Mississippi. The case was tried to a jury and the Trial Judge was Judge R. I. Pritchard, III.

A companion case of interest is Britt v. The Travelers Insurance Company, 556 F.2d 336 (5th Cir. 1977), on rehearing, 566 F.2d 1020 (5th Cir. 1978).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

The most significant legal activities I pursued in the practice of law which did not involve litigation may be described as follows: (a) The organization of businesses, including the formation of corporations and drafting the organizational documents, including buy-sell agreements, voting trust agreements, etc. (b) Negotiating and drafting agreements to purchase or sell corporations or their assets; (c) Negotiating and drafting documents on significant real estate transactions, including purchase agreements, leases, etc. (d) Estate planning and drafting of wills and trusts; (e) Negotiating and drafting agreements to sell or purchase and finance the sale or purchase of vessels; (f) Advising corporate clients relative to significant business transactions; (g) Representing a major surety company on a regular basis in the handling of matters incident to problems arising out of performance and payment bonds on construction contracts.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have an interest in the Judicial Survivor's Annuity established for surviving dependents of federal judges by Acts of Congress.

My father (Emmett M. Cox, Jr.), my brother (Kenneth W. Cox) and I jointly own a condominium, which is held for investment, at Bay Winds in Fairhope, Alabama, and I anticipate receipt of rental income from this property and gain on the sale if it is ever sold.

I own 100 shares of Galaxy Oil Company, an unlisted security, the value of which is $100.00.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Disqualification of federal judges because of a potential conflict of interest, and to some extent the procedures for addressing the question, are governed by 28 U.S.C. § 144, 28 U.S.C. § 455 and Canon 3 of the Code of Judicial Conduct for United States Judges.

I do not at this time have any concrete ideas relative to how an appellate judge would determine areas of concern other than to review the Certificate required of all counsel in the Court of Appeals in this Circuit relative to what parties are interested in the case.

No categories of litigation or financial arrangements which I have present any potential conflicts of interest which come to mind at this time.

3. Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (if you prefer to do so,

copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

A copy of the financial disclosure report required by the Ethics in Government Act of 1978 is attached.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

A financial net worth statement is attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I am not sure, but I may have served as a member of the Finance Committee or Advisory Committee in one or more campaigns by my former law partner, Bert S. Nettles, including his campaign for the Republican nomination for the U. S. Senate in 1972 and his campaigns for the State Legislature (House of Representatives) in 1970 and 1974. My role on any such committee would have been a minor one, and I am not certain that I was formally named a member of any such committee; I may, however, have been a member. If I served on any such committee, my role was a minor one.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While practicing law I on occasion accepted appointments to represent indigent defendants in State Courts, sometimes without any compensation and sometimes for modest compensation. I on occasion accepted such appointments in Federal Court for modest compensation. The amount of time involved in such representation probably involved several weeks.

On many occasions I handled routine legal matters for clients of little means for very modest fees, and at times without charge. I cannot estimate the amount of time involved in handling matters for such clients for modest fees, but it was considerable. Similarly, I cannot estimate the amount of time involved in matters for which no fee was charged, but such instances were not common.

Additionally, my partner and I did legal work for a children's home in Mobile. For routine work, no fee was charged; for extended or complex work (litigation and transfer of the assets of the home, for example), modest hourly rates were charged.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not currently belong to any organization which to my knowledge discriminates on the bases of race, sex or religion.

The Harlequins, a social organization which hosts one dinner and dance annually, consists of couples (husbands and wives). I am advised that there are no written by-laws or rules which restrict membership on the basis of race, and I have no knowledge of any policy to restrict membership on the basis of race. I am informed, however, that there are no black members, although blacks have attended the dance as guests of members. (The dinner is not open to guests.)

I was a member of the Athelstan Club from around 1964 to sometime in the early 1970's, and the Athelstan Club at that time was a downtown men's club which admitted men only. I resigned my membership in the early 1970's. I held no office or other position which dealt with membership policies, and did nothing while a member to change the policy of admitting men only.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission in my jurisdiction.

My experience in the judicial selection process was as follows: Some friends inquired as to whether I would be interested in the nomination to the Court of Appeals. After considering the matter, I said that I would be. Some time later I was contacted by the Department of Justice and advised that I was one of the persons being considered for nomination to this position and asked if I was interested. I said that I was interested, and I was invited to come to Washington for an interview. I was interviewed separately by several attorneys in the Department of Justice, and in one instance was interviewed by two attorneys at once. I was asked questions about my personal background, my legal background, and my interest in the position. I was also asked general questions relative to judicial philosophy, how I as a judge would approach cases of various types, etc. I was also asked whether or not I anticipated any particular problems with the confirmation process, etc.

I was later advised that I was being strongly considered for nomination and asked to complete questionnaires. I provided completed questionnaires. Thereafter I was asked to provide the American Bar Association with a completed questionnaire and undergo an F.B.I. investigation, which I did.

Sometime after this investigation was completed I was called by the President and advised that I was being nominated for the position.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implies assurances concerning your position on such case, issue, or question? If so, please explain fully.

No. I do not mean to suggest, however, that there were not discussions, during the interviews which I have described, relative to my judicial philosophy, approach to cases, etc. Some questions like question 5 in this questionnaire were posed by those conducting the interviews.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of inc~~reasing~~ controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of the government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My philosophy is not that of a "judicial activist" and I do not believe that the interests of either the public or the federal judiciary are served by "judicial activism."

FINANCIAL STATEMENT

NET WORTH

December 2, 1987

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		
Cash on hand and in banks	10538	00
U.S. Government securities—add schedule		
Listed securities—add schedule		
Unlisted securities—add schedule	100	00
Accounts and notes receivable:		
Due from relatives and friends		
Due from others		
Doubtful		
Real estate owned—add schedule	111,500	00
Real estate mortgages receivable		
Autos and other personal property	22,000	00
Cash value—life insurance	312	00
Other assets—itemize:		
Total assets	144,450	00

LIABILITIES		
Notes payable to banks—secured		
Notes payable to banks—unsecured	29,194	00
Notes payable to relatives		
Notes payable to others		
Accounts and bills due	3000	00
Unpaid income tax		
Other unpaid tax and interest		
Real estate mortgages payable—add schedule	44602	00
Chattel mortgages and other liens payable		
Other debts—itemize: Master Card	1227	00
Total liabilities	78023	00
Net worth	66427	00
Total liabilities and net worth	144,450	00

CONTINGENT LIABILITIES		
As endorser, comaker or guarantor		
On leases or contracts		
Legal Claims		
Provision for Federal Income Tax		
Other special debt See Schedule D		

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	no
Are you defendant in any suits or legal actions?	no
Have you ever taken bankruptcy?	no

(See Schedules A through D attached.)

NOTE: Assets shown include my assets and those of my wife, Ann H. Cox, and my minor daughter, Catherine M. Cox.

EMMETT RIPLEY COX

SCHEDULE A

Unlisted Securities

100 shares of common stock of Galaxy Oil Company	$100.00

SCHEDULE B

Real Estate Owned

276 Woodlands Avenue Mobile, Alabama	$90,000.00
Unit #14, Bay Winds (Condominium) Fairhope, Alabama undivided one-third (1/3rd) interest	$21,500.00

SCHEDULE C

Notes Payable to Banks - Unsecured

AmSouth Bank, N.A.	$ 8,000.00
The Bank of Mobile - Line of Credit	$ 3,239.99
The Bank of Mobile - Auto Loan	$10,572.40
First Alabama Bank	$ 1,334.84
Mobile Security Federal Credit Union	$ 1,022.77
LSC/VA (Tuition Loan)	$ 2,702.27
Signet Bank (Tuition Loan)	$ 2,321.73
TOTAL	$29,194.00

SCHEDULE D

Real Estate Mortgages Payable

Independent Life & Accident Insurance Company (mortgage on 276 Woodlands Avenue)	$37,580.15
Central Bank (mortgage on Unit #14, Bay Winds)	$ 7,022.25

Note: The balance indicated for the mortgage to Central Bank is one-third (1/3rd) of the mortgage balance; I am a one-third owner of the condominium mortgaged, and as co-maker on the note am contingently liable for the entire mortgage balance, which is $21,066.75.

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U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]

Page 1

Reporting Status (Check Appropriate Box)
☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

Agency Use Only:
OGE Use Only:
Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.): December 19, 1987
Termination Date (If Applicable) (Month, Day, Year): N/A

Reporting Individual's Name
Last Name: COX
First Name and Middle Initial: EMMETT R.

Position for Which Filing
Title of Position: U.S. CIRCUIT JUDGE
Department or Agency (If Applicable): 11TH CIRCUIT COURT OF APPEALS

Location of Present Office
Address (Number, Street, City, State and ZIP Code): 113 ST. JOSEPH STREET - ROOM 247 MOBILE, ALABAMA 36602
Telephone No. (Include Area Code): 205-690-2055

Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)
Title of Position(s) and Date(s) Held: U.S. DISTRICT JUDGE, S.D. ALABAMA - 12/2/81 TO PRESENT

Presidential Nominees Subject to Senate Confirmation
Name of Congressional Committee Considering Nomination: SENATE JUDICIARY COMMITTEE
Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.
Signature of Reporting Individual: Emmett R. Cox
Date (Month, Day, Year): DECEMBER 22, 1987

Other Review (If desired by agency)
Signature of Other Reviewer:
Date (Month, Day, Year):

Agency Ethics Official's Opinion
The information contained in this report discloses no conflict of interest under applicable laws and regulations.
Signature of Designated Agency Ethics Official/Reviewing Official:
Date (Month, Day, Year):

Office of Government Ethics Use Only
Signature:
Date (Month, Day, Year):

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

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U.S. Office of Personnel Management

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Reporting Individual's Name		Page Number		Schedule
COX, EMMETT R.	Assets and Income		2	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
S or DC	Exam-ples: X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp Income									$50,000			
1	1/3rd interest in condo-																										
2	minium-Bay Winds, Fairhope, Alabama				X					X						X											
3	2/5ths interest in																										
4	promissory notes dated 4-23-82, executed by Jane																										
5	B. Sachen payable to John H. Cox, Catherine M. Cox																										
6	and others (notes paid in full 12-86)										X						X										
7	Jefferson Federal Savings																										
8	& Loan Association (Savings Account)		X								X						X										
9																											
10																											

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U.S. Office of Personnel Management

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OMB No. 3209-0001

Reporting Individual's Name COX, EMMETT R.	Page Number	3	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
	John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1	THE BANK OF MOBILE, N.A.	Liability is evidenced by two promissory notes - one was executed								
2		in 1986 for a term of 60 months at 10%; the other was executed in 1986								
3		and is a revolving line of credit, with interest and 5% of principal								
4		payable monthly with fluctuating rate of interest (currently 8.76%).					X			
5	CENTRAL BANK OF THE SOUTH	Promissory note secured by mortgage								
6		on Bay Winds Condominium, Fairhope, Alabama	1978	8 1/2	20 yrs		X			

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE XX

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/75 ptnership agmnt.

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276-108

SF 278 (Rev. 1/86)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name	COX, EMMETT R.

Page Number	4	Schedule	D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☒

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

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AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

December 22, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: EMMETT R. COX
United States Court of Appeals
for the Eleventh Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Emmett Cox for appointment as Judge of the United States Court of Appeals for the Eleventh Circuit.

A substantial majority of our Committee is of the opinion that Judge Cox is "Well Qualified" for this appointment. The minority found him to be Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

KENNETH M. HOYT

Birth:	March 2, 1948	San Augustine County, Texas
Legal Residence:	Texas	
Marital Status:	Married	Veola LaVerne Johnson Hoyt 3 children
Education:	1966 - 1969	Texas Southern University A.B. degree
	1969 - 1972	Texas Southern University School of Law J.D. degree
Bar:	1972	Texas
Experience:	1972 - 1975	Wickliff, King, Hoyt & Jones Partner
	1975 - 1979	Anderson, Hodge, Jones & Hoyt Partner
	1979 - 1980	Hoyt, Webster & Sheppard Partner
	1980 - 1981	Hoyt, Webster & Andrews Partner
	1981 - 1982	State Judge 125th District Court of Harris County
	1983 - 1984	Sole practitioner
	1985 - present	Justice First Court of Appeals of Texas
Office:	1307 San Jacinto - 10th Floor Houston, Texas 7002 713 655-2708	
Home:	3334 South MacGregor Way Houston, Texas 77021	

To be United States District Judge for the Southern District of Texas

PERSONAL DATA QUESTIONNAIRE

1. Full name (include any former names used.)

   Kenneth Michael Hoyt

2. Address: List current place of residence and office address(es).

   Office:
   First Court of Appeals
   1307 San Jacinto - 10th Floor
   Houston, Tx. 77002
   (713) 655-2708

   Home:
   3334 South MacGregor Way
   Houston, Tx. 77021
   (713) 741-6477

3. Date and place of birth.

   March 2, 1948; San Augustine County, Texas 75972

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

   Married May 31, 1969 - Veola LaVerne Johnson, Owner, Fitch Floral Company, 4819 Almeda, Houston, Texas 77004

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Texas Southern University - 1966-69 (A.B. Pre-Law Program) Texas Southern University School of Law (now Thurgood Marshall School of Law) 1969-1972; (Juris Doctorate Degree).

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions, and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   1972-1975: Wickliff, King, Hoyt & Jones
   4720 Dowling Street, Houston, Tx. 77004
   Practiced consisted of a general practice in civil, criminal, and family law. Commenced specialization in municipal law.

   1975-1979: Anderson, Hodge, Jones & Hoyt, Inc.
   1802 Calumet, Houston, Tx. 77004
   General practice. My area of concentration was civil litigation, municipal law, and federal litigation. Served as City Attorney Kendleton, Tx. and Project Manager Wastewater Project, Prairie View, Tx.

   1979-1980: Hoyt, Webster & Sheppard
   1980-1981: Hoyt, Webster & Andrews
   3223 Smith, Houston, Tx. 77006
   Practice primarily in civil area, including heavy municipal work and was City Attorney and part-time Controller of Kendleton, Texas. Duties as City Attorney include prosecution of all misdemeanor cases including ordinance violations.

   1981-1982: State Judge of the 125th District Court of Harris County.
   Appointed by Governor William P. Clements. Tried all cases assigned for trial to that court from October 13, 1981 through November 1982. Cases included trials and motions on all conceivable civil matters. (Heard argument or evidence in over 1200 cases).

1983-1984: Kenneth M. Hoyt (Solo Practitioner)
1802 Calumet, Houston, Tx. 77004
Practice primarily civil litigation in construction contract disputes; handled divorce, criminal, and personal injury claims. Provided defense work for City of Patton Village, Tx.

1985-Present: Since January 1, 1985 served as Justice, (one of nine) on the First Court of Appeals of Texas. Seventy percent (70%) cases before the Court are criminal appeals of felony and misdemeanor cases from the fourteen (14) county district. Thirty percent (30%) are civil. (Reviewed over 600 cases to this time; authored over 125 opinions).

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Texas Army National Guard, October 14, 1972 through October 13, 1978; (E-5 Sgt.) 454-78-0964; Honorable Discharge.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

(1) Houston Bar Association

a) Board of Houston Lawyer Referral Service

b) Committee on Appellate Judiciary

(2) State Bar of Texas - 1972-present

a) Minimum Continuing Legal Education Task Force - 1986

b) Member Referendum Force/Selection of Judges - 1982

(3) Houston Lawyers Association - 1973-1984

(4) National Bar Association - Life Member

(5) American Bar Association - 1972-present

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None. Other memberships are as follows:

Member, Wheeler Avenue Baptist Church
Former Chairman, Capital Development Committee
Member, Andrew Circle Wheeler Avenue Baptist Church
Member, Advisory Board Salvation Army
Member Host Committee - National Urban League Conference
Member, Steering Committee Houston Area Urban League EOD Dinner
Board Member, Parents of Murdered Children and Survivors/Coalition of Victims Rights
Board Member, Business & Professional Men's Club
Former Member of the Braeswood Association
Former Board Member, South MacGregor Civic Club
Former Member of Century Club YMCA

Member, Texas Council of Black Republican
Member, Circle R (Harris County Republican Party)
Sustaining Member, Associated Republicans of Texas)
Sustaining Member, Republican Party of Texas
Former Member of Juvenile Justice & Delinquency Prevention Advisory Board
Former Member of Blue Ribbon Commission/Review Criminal Justice Corrections System
Member, Board of Visitors Thurgood Marshall School of Law

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Texas - September 20, 1972; Southern District of Texas - April 16, 1974: By Permission: Eastern and Northern Districts of Texas, and Fifth Circuit Court of Appeals

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

See Attachment I.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. January 5, 1987 - Dr. Donald Russell, 6448 Fannin, (713) 797-9191, Diagnostic Clinic of Houston, Texas 77030.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1981-1982: State Judge of the 125th District Court of Harris County.
Appointed by Governor William P. Clements. Tried all cases assigned for trial to that court from October 13, 1981 through November 1982. Cases included trials and motions on all conceivable civil matters. (Heard argument or evidence in over 1200 cases)

1985-Present: Since January 1, 1985 served as Justice, (one of nine) on the First Court of Appeals of Texas. Seventy percent (70%) cases before the Court are criminal appeals of felony and misdemeanor cases from the fourteen (14) county district. Thirty percent (30%) are civil. (Reviewed over 600 cases to this time; authored over 125 opinions).

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

(1) Christopher J. De Mangin v. The State of Texas, 700 S.W.2d 329 (Tex. App.--Houston [1st Dist.] 1985).

Ceiling Fan Warehouse Inc. No. 3 v. John D. Morgan, 723 S.W.2d 195 (Tex. App.--Houston [1st Dist.] 1986).

Jacqueline C. Johnson, et al. v. Karen G. Levy, 725 S.W.2d 473 (Tex. App.--Houston [1st Dist.] 1987).

Houston North Properties, et al. v. P.T. Eichelberger, Jr., et al., 731 S.W.2d 719 (Tex. App.--Houston [1st Dist.] 1987).

Southern Insurance Co./Zale Indemnity Co. v. Progressive County Mutual Insurance Co., and Merrimack Mutual Fire Insurance Co., 708 S.W.2d 549 (Tex. App.--Houston [1st Dist.] 1986).

Elizabeth Leeds v. Denton A. Cooley, et al., 702 S.W.2d 213 (Tex. App.--Houston [1st Dist.] 1985).

Bay Ridge Utility District, et al. v. 4M Laundry, et al., 717 S.W.2d 92 (Tex. App.--Houston [1st Dist.] 1986).

William Beasley v. The State of Texas, 721 S.W.2d 426 (Tex. App.--Houston [1st Dist.] 1986).

Sterling Sanford Sharrar, Jr. v. The State of Texas, No. 01-86-00486-CR (Tex. App.-- Houston [1st Dist.] June 4, 1987) (not published).

Beech Aircraft Corporation, et al. v. Dr. Wiley J. Jinkins, III, 698 S.W.2d 722 (Tex. App.--Houston [1st Dist.] 1985 ref. and aff'd No. C-4807 (July 8, 1987).

(2) My best records show that of the more than 220 opinions that I have personally authored, civil and criminal, I have been reversed on three occasions. On the three other occasions, my opinion was modified or remanded for this Court to consider points misconstrued or overlooked. They are as follows:

CIVIL

Charles Angelo v. Champion Restaurant Equipment, Co., No. 01-85-00423, (unpublished 1985). I affirmed the trial court's decision to let stand a default judgment because the defendant had failed, in his motion for new trial, to show that he was "ready, willing, and able" to proceed to trial promptly and that he would reimburse Champion for the cost incurred in procuring the default judgment (follow our own Court's precedent in Stone Resources, Inc. v. Barnett, 661 S.W.2d 148, 152 (1983, no writ).

The Texas Supreme Court ruled that this showing was not necessary if the party shows his failure to file a written answer was not intentional or the result of conscious indifference and that he had a meritorious defense.

Beech Aircraft v. Jinkins, 698 S.W.2d 722 (Tex. App.--Houston [1st Dist.] 1985, reformed and affirmed Texas Supreme Court No. C-4807 (July 8, 1987). The Texas Supreme Court in a per curiam opinion affirmed my opinion with modifications. The Court felt that I had interpreted Bonniwell v. Beech Aircraft Corp., 663 S.W.2d 816 (Tex. 1984) too broadly as authority that a settlement must be incorporated into a judgment. The Court also rejected my conclusion that a judgment, for contribution purposes, may be created by agreement of the parties following settlement.

My guidance in this area came from the federal court decisions because the State Supreme Court had not acted in this area.

Singleton v. New York Underwriters Inc., Co., 739 F.2d 198 (5th Cir. 1984).

CRIMINAL

Anderson v. State, No. 84-0451-CR (1986). The defendant was charged with securing a signature on a deed by deception. On original submission, we reversed the conviction because, in our opinion, the term deception was an element of the offense. Because a proper motion to quash had been filed, we concluded that the trial court erroneously failed to grant the motion it and thereby denied the defendant notice of the act or omissions for which he was charged.

On remand the Court of Criminal Appeals referred this Court to a subsequent opinion, Opdahl v. State, 705 S.W.2d 697 (1986) that held that the matter complained of was evidentiary and whether this defendant was denied notice must be determined from the record as a whole.

Jermany v. State, No. 01-84-00717 (1985). On original submission we held that the "on the scene," pre-trial identification was tainted possibly resulting in a mistaken identification, relying on our own precedent in Perry v. State, 669 S.W.2d 794 (1984). The Court of Criminal Appeals subsequently reversed this Court's decision in Perry and remanded Jermany to be considered in light of its ruling in Perry. Jermany failed to object or show his inability to object to the pre-trial identification procedure. He could not raise this objection for the first time on appeal.

DeMangin v. State, 700 S.W.2d 329 (1985).

This Court affirmed a conviction for driving while intoxicated over the defendant's contention that because he was indigent and could not afford hired counsel, delay in the appointment of counsel until after he had to choose to take or not take the "breath test" denied him rights under the state or federal Constitutions. The case was remanded for this Court because we had failed to address the State Constitutional issues.

We concluded that Article I, §10 of the state Constitution did not afford any greater protection than the federal Constitution and reaffirmed our previous decision.

Turner v. State, 688 S.W.2d 698 (1985).

This Court affirmed the judgment. On remand, the Court of Criminal Appeals held that this Court misconstrued and failed to address the defendant's contention that the jury charge erroneously included an instruction that the law presumes and intent to commit theft if one enters a habitation at nighttime. On rehearing, this Court held that the inclusion of the presumption was fundamental error, but because no objection was lodged at the trial court level, the defendant must show egregious harm and that harm must be assayed from the record as a whole. The judgment was again affirmed.

(3) Seldom does a state intermediate appellate court address the constitutionality of state or federal statutes. The following cases represent those instances.

DeMangin v. State, 700 S.W.2d 329 (1985). (Challenges the constitutionality of the intoxilyzer test.)

Casares v. State, 712 S.W.2d 818, dissenting opinion. (Constitutionality of Tex. Code Crim. P. art. 37.07 §4 (Vernon 1986))

Beasley v. State, 721 S.W.2d 426 (1986). Reversed position on art. 37.07 §4).

Hill v. State, No. 01-86-00069-70 (Tex. Penal. Code Ann. §43.21(a)(7) and 43.23(c)(1) not unconstitutional as volitive of right to privacy.) (Slip Opinion).

Bay Ridge Utility District v. 4M Laundry, 717 S.W.2d 92 (1986). (Civil rights charges raised).

Gloria Jackson v. Texas Commerce Bank, 715 S.W.2d 764. (Right to trial by jury in civil cases addressed).

Channel Two Television Co. v. Honorable Charles A. Dickinson, 725 S.W.2d 470. (Reporter's notes privileges not subject to compelled disclosure by statute).

Dubin v. Carrier Corporation, 731 S.W.2d 651. (Constitutionality of a state statute of repose).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have served in no public office except judge.

Yes. I was an unsuccessful candidate in 1980 and 1982. In 1980 I ran for justice of the peace and in 1982 I lost in the primary in my effort to remain on the 125th District Court.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

No.

1972-1975: Wickliff, King, Hoyt & Jones
4720 Dowling Street, Houston, Tx. 77004
Practiced consisted of a general practice in civil, criminal, and family law. Commenced specialization in municipal law.

1975-1979: Anderson, Hodge, Jones & Hoyt, Inc.
1802 Calumet, Houston, Tx. 77004
General practice. My area of concentration was civil litigation, municipal law, and federal litigation. Served as City Attorney Kendleton, Tx. and Project Manager Wastewater Project, Prairie View, Tx.

1979-1980: Hoyt, Webster & Sheppard
1980-1981: Hoyt, Webster & Andrews
3223 Smith, Houston, Tx. 77006
Practice primarily in civil area, including heavy municipal work and was City Attorney and part-time Controller of Kendleton, Texas. Duties as City Attorney include prosecution of all misdemeanor cases including ordinance violations.

1981-1982: State Judge of the 125th District Court of Harris County.
Appointed by Governor William P. Clements. Tried all cases assigned for trial to that court from October 13, 1981 through November 1982. Cases included trials and motions on all conceivable civil matters. (Heard argument or evidence in over 1200 cases).

1983-1984: Kenneth M. Hoyt (Solo Practitioner)
1802 Calumet, Houston, Tx. 77004
Practice primarily civil litigation in construction contract

disputes; handled divorce, criminal, and personal injury claims. Provided defense work for City of Patton Village, Tx.

1985-Present: Since January 1, 1985 served as Justice, (one of nine) on the First Court of Appeals of Texas. Seventy percent (70%) cases before the Court are criminal appeals of felony and misdemeanor cases from the fourteen (14) county district. Thirty percent (30%) are civil. (Reviewed over 600 cases to this time; authored over 125 opinions).

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical client was a small business, small city or young professional generally with a contract problem. I did not have a particular specialty.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

(a) My appearance in court, except as a City prosecutor, was occasional. The frequency did not vary to any degree during my practice.

2. What percentage of these appearances was in:

(a) federal courts;

Federal courts. 5%

(b) state courts of record;

State courts of record. 85%

(c) other courts.

Other courts. 10%

3. What percentage of your litigation was:

(a) civil;

Civil. 80%

(b) criminal.

Criminal. 20%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Excluding my judicial and prosecutorial trials, I tried approximately 15 cases as sole or chief counsel and 2-5 as associate counsel.

5. What percentage of these trials was:

(a) jury;

Jury 60%

(b) non-jury.

Non-jury. 40%

18. Litigation: Describe ten of the most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case, and a succinct statement of what you

believe to be the particular significance of the case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case a) the dates of the trial period or periods, b) the name of the court and the name of the judge before whom the case was tried, and c) the individual name, address and telephone numbers of co-counsel and of counsel for each of the other parties.

The significance of each of these cases is the same. The client had a legal problem that could not be solved short of litigation. As a matter of practice, I tried to amicably resolve every dispute. In most instances, I was successful. In the more complex litigation, resolving the dispute often required litigation. These cases, by and large, were somewhat complex. Most of my files have long since been returned to the client or destroyed.

1. City of Prairie View v. William F. Sullivan, Cause No. 1139,041, 215th District Court, Harris County, Texas. Judge Charles C. Price presiding (deceased).

   This suit arose when the defendant, the project engineer for a water and sewer project overcharged and caused the system to fail. I was the sole attorney for the City and was unsuccessful in persuading the jury that an engineer who fails to properly design and supervise construction of the project and then charge to correct his errors was at fault. Mr. Harry S. Jones, 5222 Spruce, Bellaire, Texas represented Mr. Sullivan. The case was not appealed. It was tried in 1980-1981.

2. Lawrence Boze v. Riverside National Bank, Cause No. 80-03757, 11th District Court, Harris County, Texas, Judge William N. Blanton, Jr. presiding.

   This case involved a dispute between Mr. Boze and Riverside concerning the Bank's notice of foreclosure on a contractor's mechanic's and materialmen's lien. Mr. Boze sued for fraud and under the Deceptive Trade Practices Act. The jury returned a verdict against the bank, however, the judge entered a judgment notwithstanding the verdict and his ruling stood on appeal. The case was not reported. Mr. Isaac E. Henderson, 2546 South Loop West (668-7885) Houston, Texas handled the matter for Mr. Boze. It was tried in 1983 and John W. Davis 2905 Elgin (528-0581) was co-counsel for the Bank.

3. Irma Martinez, et al. v. Pool Distribution Company, Inc., Cause No. 81-04212, 246th District Court, Harris County, Texas, Judge Alvin Zimmerman presiding (Retired).

   This case presented the question of damages in a wrongful death case resulting from a stalled unattended vehicle left by a Pool employer on the expressway. I was lead counsel for Wilma C. Knowles, the wife of the decedent. The jury ruled unfavorably against the wife on the theory that there was no loss in a marriage where the parties had been separated for a number of years. Judge Bonnie J. Fitch, 1002 Preston, (227-6408), Houston, Texas. The defendants were represented by: Thomas R. Hornbuckle, 602 Sawyer, Houston, Texas (880-0517); Robert A. Cattanach, 3410 Mt. Vernon, Houston, Texas (523-2486). Other attorneys for plaintiffs and minors were: Marty R. Akins, 3300 One Allen Center (651-3000) and Dennis Reich, 4265 San Felipe (622-7271) Houston, Texas. This case was not appealed. It was tried in 1984.

4. Annie Teel v. O.H. Davis, Cause No. 1149 Angelina County, Texas, County Court At Law Judge David M. Cook presiding.

   This suit was initiated to recover the policy amount due on a burial policy purchased by Teel. Davis collected the premium pursuant to the insurance trust but refused to pay upon death. The jury returned a verdict for Teel. The case was appealed to the 9th Court of Appeals in Beaumont, Texas that affirmed the judgment. Mr. Davis was defended by J.T. Maroney (Deceased) P.O. Box 1443, Lufkin, Texas 75902. October 11, 1979 was the single day of trial.

5. Billie McGee v. Martha Marie McGee, Cause No. ________, 312th District Court, Harris County, Texas, Judge Robert S. Webb III, presiding.

This case involved re-trial of a divorce case when the validity of the previous judgment entered was challenged. Mr. McGee alleged impropriety by Mrs. McGee and her former attorney. Judgment favorable to Mrs. McGee was entered following a non-jury trial. Mr. McGee was represented by Mr. John Jenkins, 609 Fannin, Houston, Texas (223-4173).

6. C.E. Epperson v. Chester A. Cary, et ux, Cause No. 81-20243, 334th District Court, Harris County, Texas, Judge Ken Harrison presiding (Judge Marsha Anthony signed order after defeating Judge Harrison).

This non-jury case involved a contract dispute over the construction of the Cary's home. Epperson could not proceed but then sued the Cary's after they completed the house. After Epperson's case was completed, a motion for instructed verdict was requested. The Court took the motion under advisement during which time the case was settled by agreed judgment for a nominal sum. No appeal was taken and Mr. Bruce Bornefeld, 1003 Wirt Road (932-8300) Houston, Texas represented Mr. Epperson. The case was tried in December 1984, judgment was entered March 6, 1985.

7. Glenn Dillard, et al. v. Ennis Humphry, et al., Cause No. 33,436-C, 240th District Court, Fort Bend County, Texas, visiting Judge Shearn Smith from Houston, Texas presiding.

This case involved an election contest. Dillard alleged irregularity in the vote tally. The suit was tried; judgment entered December 11 and 20th 1978. Mike Orsak (494-3156) Sugarland, Texas represented the contesting parties. It was a non-jury trial.

8. C.D. Hartwell v. Riverside National Bank, Cause No. 949,770, 129th District Court, Harris County, Texas, Judge Tom Stovall presiding.

This case involved an allegation of deception by Riverside banking officials in handling Mr. Hartwell's loan application. The suit sought damages because the loan was allegedly made but not funded. This case was tried in 1974. I represented the bank and its officials, A. Martin Wickliff represented Mr. Aloysuis Wickliff. Mr. John Lohmann III, 5005 Riverway, Houston, Texas (961-7999). It was tried to a jury and Mr. Lohmann prevailed as to the President; different lawyers were secured for the motion for new trial.

9. The Sportsman's Fraternal Order of Texas, Inc. v. Texas Alcoholic Beverage Commission, Cause No. 983, 352, 190th District Court, Harris County, Texas. Judge Wyatt Heard presiding.

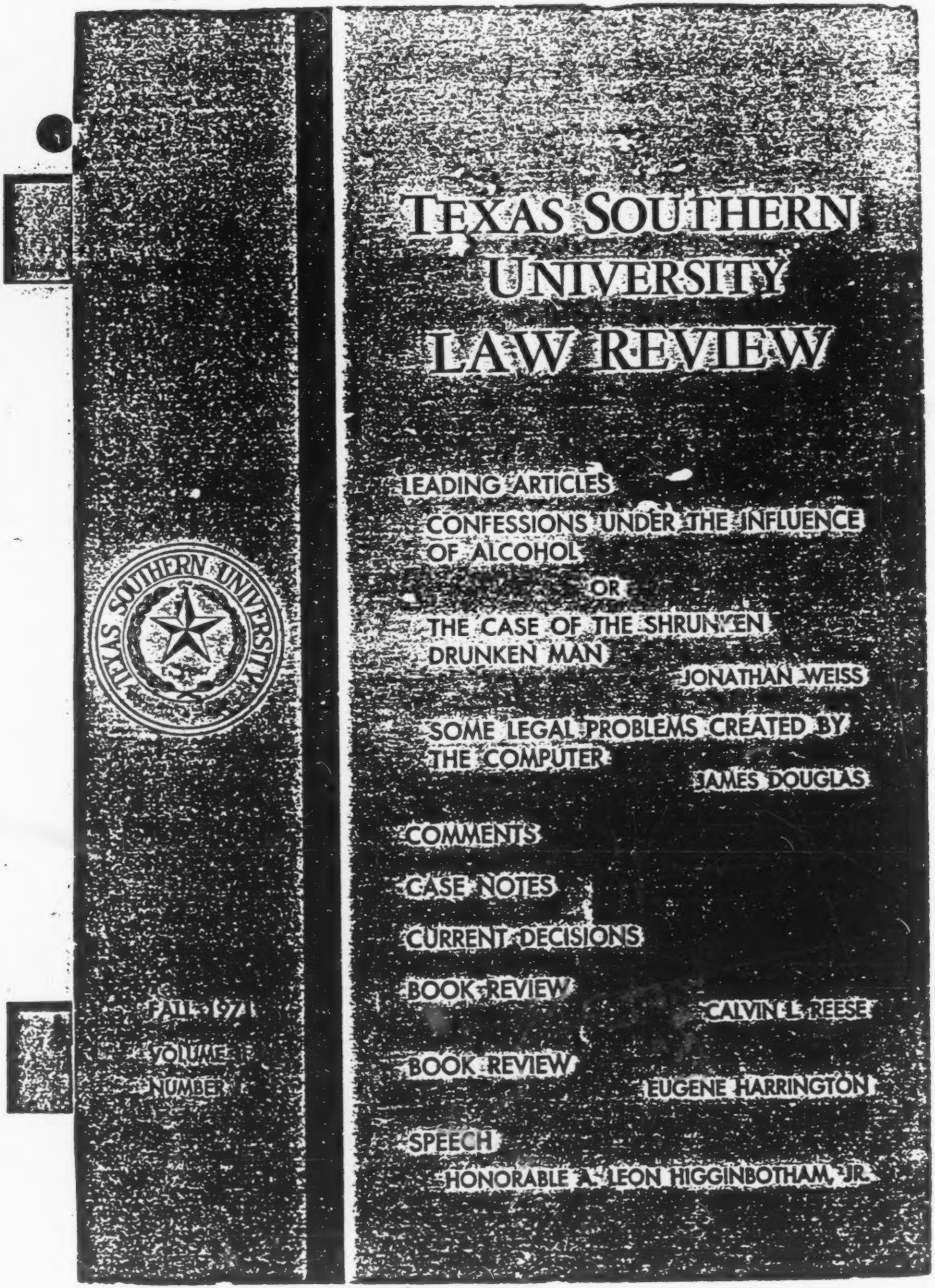
This issue raised by this suit was the disparity of treatment by the Commission in on the one hand issuing permits for alcoholic consumption to veterans and fraternal organizations that were predominantly white and the refusal to issue exemption certificates to a predominantly black fraternal organization. This case was tried to the judge and won. On appeal the First Court of Appeals reversed and remanded the case for a determination of whether the substantial evidence rule was complied with. The case is reported at Texas Alcoholic Beverage Commission v. The National Sportsman's Fraternal Order of Texas, 523 S.W.2d 259 (Tex. Civ. App.--Houston [1st Dist.] 1975, no writ). The State of Texas was represented by Mr. Max P. Flusche, Jr., Assistant Attorney General, P.O. Box 12548, Austin, Texas.

10. Gloria Jackson v. City of Killeen, Cause No. ________, U.S.District Court, Western District, Waco Division, Judge Shannon presiding.

This case involved the claims of Mrs. Jackson following termination of her employment at the City library. The suit was won at the trial level by Mrs. Jackson, but reversed by the Fifth Circuit on a law question. Whether Mrs. Jackson's best performance was sufficient in light of her supervisor's acknowledgement that Mrs. Jackson did her best, but her best was insufficient. Mr. Jerry Campbell, Naman, Howell, Smith & Lee, P.O. Box 1470, Waco, Texas 76703-1470 represented the City. It was a two day trial that occurred in 1979.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

During my law practice years, specifically 1977-79, I served as project manager of a construction project for a fresh water and waste water system for the entire city of Prairie View, Texas, that had become defunct. My job was to get further financing, supervise distribution of funds, employ an engineer to complete the project, interface with the Texas A&M system to connect to their sewer system, secure the purchase of all water and sewer systems in the city, procure easements and rights-of-way and negotiate all necessary contracts for completing construction. The system was completed and was operational within 18 months.



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LEADING ARTICLES

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SPEECH
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CASE NOTES

CONSTITUTIONAL LAW—Illegally obtained evidence may be used against the accused for impeachment purposes where the accused takes the witness stand—*Harris v. New York*, 91 S.Ct. 643, (1971)

In a five to four decision[1] the Burger Court authorized the use of illegally obtained evidence to discredit the defendant's testimony if he takes the witness stand. This decision marks the beginning of what may be a complete turnabout in criminal justice as construed in *Miranda v. Arizona.*[2] The facts surrounding the *Harris* decision indicate that Viven Harris, a resident of New York, was arrested and charged in a two count indictment with twice selling heroin to an undercover police officer. Upon taking the witness stand, Harris admitted making a sale of contents to the officer but claimed it was baking powder and part of a scheme to defraud the purchaser. On cross-examination, Harris stated that he could not remember any of the questions or answers recited by the prosecution. (There was testimony to the effect that Harris was suffering from lack of drugs and possibly from the after effects of a serious accident.) The statements in the written confession were in effect contradictory to the direct testimony and to the effect that he had made purchases on January 4 and 6 while acting as a middleman with money furnished by the officer. Harris' direct testimony contained no mention of any post-arrest statement. In an effort to minimize petitioner's testimony the prosecutor deliberately resorted to cross-examination by the impeachment use of a concededly unconstitutionally obtained statement. The jury found Harris guilty on the second count after being advised to use the statement in passing on credibility only. The jury was unable to reach a verdict as to the first count which was later dismissed by the court for lack of prosecution.

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[1] Harris v. New York, 91 S.Ct. 643 (1971).

[2] 384 U.S. 436 at 476-477 (1966):

> "The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner. . . . Statements merely intended to be exculpatory by the defendant are often used to impeach his testimony at trial. . . . These statements are incriminating in any meaningful sense of the word and may not be used without the full warnings and effective waiver required for any other statement."

The transcript of the interrogation used by the prosecutor revealed that no warning of a right to appointed counsel was given before questions were asked by the prosecutor.[3] In addition, the statement in question itself disclosed that Harris was interrogated off the record prior to the recorded statement, at which time he received no advice whatever of his rights according to the trial Assistant District Attorney, who was the same Assistant District Attorney who took Harris' statement. The New York Court of Appeals affirmed the decision in a *per curiam* opinion.[4]

On appeal to the United States Supreme Court the decision was affirmed.[5] The affirmation turned on Harris' decision to take the witness stand in his defense. Chief Justice Burger, in concluding the decision, stated that:

> "Where the petitioner voluntarily takes the stand he is obligated to speak truthfully and accurately and may not turn illegally obtained statements to his own advantage so as to free himself of the risk of confrontation with prior inconsistent statements and commit perjury."[6]

The Court, in a somewhat cursory opinion, seemingly ignores the effects of its decision on *Miranda*. The *Harris* decision may be, and rightfully so, interpreted by local law enforcement officials as a directive by the Supreme Court to use any means necessary to obtain a statement from the accused. Such a posture by the Court alters the principles espoused in *Miranda*. Although Justice Clark dissented in *Miranda* he was cognizant of the weight to be accorded the majority opinion.[7] He interpreted the majority opinion as setting forth a new constitutional rule. The new rule precluded "the police from engaging in any custodial interrogation without advising the accused that he has a right, under the Fifth Amendment to the presence of counsel during interrogation and that, if he is without funds, counsel will be furnished him."[8] Application of this rule prohibited the admission of tainted statements obtained by law-breaking police officers.

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[3] *Supra* note 1.
[4] 25 N.Y.2d 175, 250 N.E.2d 349 (1969).
[5] *Supra* note 3.
[6] *Ibid.*
[7] *Supra* note 2.

As a result of the *Harris* decision scores of decisions dating back to the inception of the due process revolution may have been affected. To understand the juristic impact of the present decision an examination of pre-Miranda decision is material.

Perhaps the due process revolution acquired its impetus from the need to suppress illegally seized evidence. Many judges were instrumental in plodding this path. Mr. Justice Holmes is credited with moving the first barricade that led to the constitutional reformation of the 1960's. In *Moore v. Dempsey,*[9] Justice Holmes seized upon the due process clause[10] to begin policing state justice. In the *Moore* case the Court was faced with the death sentences of five blacks who had been convicted of murder in a court room dominated by a mob. The Court declared that if the blacks could prove their charges in a *habeas corpus* hearing before a Federal District judge their treatment amounted to a denial of due process and they should be given a new trial.[11]

Nine years later the Court embarked upon the due process clause to attack a state conviction in *Powell v. Alabama.*[12] The conviction in *Powell* indicated that the accused were denied effective counsel at the trial. Justice Sutherland, delivering the majority opinion, went one step further than extending due process to situations wherein the accused were denied an opportunity to secure counsel. Under the circumstances, the failure of the trial court to appoint counsel was likewise a denial of due process.[13]

The next significant development was *Brown v. Mississippi*[14] where the Justices rendered void a state conviction. The facts in *Brown* indicated that the defendants were convicted of murder solely on the basis of confessions admittedly obtained under torture inflicted by deputy sheriffs. This was the first time that the Supreme Court had thrown out a state confession.[15] Chief Justice Hughes indicated that confessions beaten out of an accused came within the purview of the due process clause and, therefore, inadmissible.

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[8] *Id.* at page 500. Mr. Justice Clark dissenting.

[9] 261 U.S. 86 (1923).

[10] U.S.C.A. Constitutional Amendment XIV. . . . No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, *without due process of law.*

[11] *Supra* note 9. The case was finally sent back to Arkansas for a hearing before a Federal District Judge. The sentences were eventually commuted.

[12] 287 U.S. 45 (1932). The Court held that Alabama could not execute the defendants (Scottsboro Boys), five blacks convicted of raping two white girls, because they had been denied effective counsel at their trial.

[13] *Id.* at page 69.

[14] 297 U.S. 278 (1936). The Supreme Court in an opinion by Chief Justice Hughes unanimously reversed the conviction.

It seems very clear from these Supreme Court decisions that the criterion for casting out evidence was based upon the outrageousness of the method employed by the state to obtain the evidence. Whether evidence was obtained in an outrageous manner hinged upon its ability to pass the fundamental fairness test.[16]

Another problem which menaced the citizen's rights was the double standard that existed between federal and state law enforcement. The federal exclusionary rule—the rule that the Fourth Amendment bars the use of evidence through illegal search and seizure—was the first rule to become applicable to the states.[17] As long as the Court maintained the inconsistent position that only state courts could act to prohibit Fourth Amendment violations by state officers, the Justices had not crossed the all-important line between brooding and occasionally-vented displeasure at state justice and the imposition of rigid rules of procedure that states must follow in all situations.[18] *Mapp v. Ohio* moved the Court across that line.[19] In so doing the Supreme Court signaled the beginning of a due process revolution that was to transform the rules of state law enforcement and criminal procedure and provoke the current protest that the Court is coddling criminals and handcuffing the police.[20]

The *Mapp* decision pronounced a new rule applicable to state courts on the issue of admissibility of evidence. It set the stage for a re-examination of the voluntariness test.[21] Voluntariness was one of the standards for judging the admissibility of confessions under the post-fundamental fairness era. The idea of throwing out voluntary admissions, an idea which has haunted the Court for some time, became patent in *Escobedo v. Illinois.*[22] The Court rejected the confession of the accused because he had been denied access to his attorney during interrogation.[23] *Escobedo* marked the turning of a corner by the Court, but the opinion did not say where the new course would lead.[24] Nevertheless, the Court stated that:

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[15] Graham, *The Self-Inflicted Wound*, The Macmillan Company (1970) [hereinafter cited as Graham].

[16] The "Fundamental Fairness" standard was posed in a question by Justice Cardozo. The test for determining if a given state action denied a citizen due process of law was: "Whether it violate those fundamental principles of liberty and justice which lie at the base of our civil and political institutions?" See Palko v. Connecticut, 302 U.S. 319, at 328 (1937).

[17] Mapp v. Ohio, 367 U.S. 643 (1961). The Court overruled Wolf v. Colorado, 338 U.S. 25 (1949) and held that illegally obtained evidence may not be used in a state court. Such evidence is considered coerced.

[18] Graham at page 46.

[19] *Ibid.*

[20] *Id.* at page 28.

[21] Lisenba v. California, 314 U.S. 219, 236 (1941). Note that as early as 1941 the Court indicated that the due process clause required the exclusion of evidence not on the basis of falsity, but on the fundamental fairness standard, whether true or false, because of the

> "When the process shifts from investigatory to accusatory—when its focus is on the accused and its purpose is to elicit a confession—our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer."[25]

Just how this decision was to affect future police conduct demanded further amplification. This amplification was secured in *Miranda*. The four commandments outlined in *Miranda* proved evident what appeared to be a loss of faith in state police officers by the Court.[26] The *Miranda* decision required that police officers recite these four commandments prior to interrogation. This decision was the high-water mark of the due process revolution, the ultimate expression of the judicial philosophy and technique that had characterized the Warren Court on crime.[27]

The majority opinion in *Harris* underscored *Walder v. United States*[28] as the controlling case on the issue. Justice Frankfurter

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way it was obtained. Under the standard the Court was not concerned with whether the contents of the confession were true.

[22] 378 U.S. 478 (1964). The decision marked the beginning of a new period in the development of judicial doctrines controlling the use of confessions. The Court was faced with the issue of the right of an accused under the Sixth Amendment to assistance of counsel upon request. It resolved that once the investigation goes beyond a general inquiry the accused must have the opportunity to consult counsel.

[23] *Ibid.*

[24] Graham at page 155.

[25] *Supra* note 22, page 492.

[26] *Supra* note 2, page 479. The Court stated that the accused must be: (1) Warned prior to any questioning that he has a right to remain silent; (2) anything he says can be used against him in a court of law; (3) he has the right to the presence of an attorney; (4) if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

[27] Graham at page 157.

[28] 347 U.S. 62 (1954). The facts of *Walder* indicated that he was indicted for purchasing and possessing heroin. The Government dismissed the prosecution because of a motion to suppress illegally seized evidence. Two years later he was indicted for another narcotic violation unrelated to the one in 1950. In testifying in his own defense he made the sweeping

delivered the opinion in *Walder* undertaking what appears to be two mutually exclusive avenues. On the one hand, the majority opinion adopts the rule that the accused must be free to deny all the elements of the case against him without thereby giving leave to the Government to introduce by way of rebuttal, evidence illegally secured by it, and, therefore, not available for its case in chief.[29] In the same breath the Court states that the accused may not shield himself from introduction of evidence unlawfully obtained where his testimony is perjurious.[30] In the words of the Court: "there is hardly justification for letting the defendant affirmatively resort to perjurious testimony in reliance on the Government's inability to challenge his credibility."[31]

The Frankfurter Court was replaced by the Warren Court before the specific course of *Walder* was ascertained. With the replacement of the Frankfurter Court the *Walder* decision was overshadowed by the many decisions of the Warren Court—one being *Miranda*. This decision merely amplified the trend that had been set in *Shephard v. State*.[32] The majority rule expressed in *Shephard* stated that an involuntary or otherwise unqualified confession may not be used to impeach an accused person who takes the stand in his own behalf.[33] Justice Holmes, writing for the Court in *Silverthorne Lumber Co., Inc. v. United States*[34] adopted the same view. The Court in *Silverthorne* refused to allow the Government to introduce in evidence photostatic copies of books and papers which had been unconstitutionally seized. Justice Holmes said: "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court *but that it shall not be used at all.*"[35] The conclusion in *Miranda* that illegally obtained evidence is inadmissible for any purpose is consistent with the majority rule prevailing in this country.

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statement that he had never dealt in or possessed any narcotics. Because of his statement the Government was allowed to introduce the testimony of one of the officers involved in the 1950 seizure. His testimony was that he had found narcotics when he raided Walder's home. Walder's testimony was then, impeached.

[29] *Id.* at page 65.

[30] *Ibid.*

[31] *Ibid.*

[32] 59 N.W. 449 (1894).

[33] *Ibid.*

[34] 251 U.S. 385 (1920).

[35] *Id.* at page 392.

Many legal minds[36] dismissed *Walder* as the case handsomely dispensed with by *Miranda*. Although *Miranda* was not applied retroactively it is somewhat apparent that it undercuts the rationale of *Walder*. The underlying rationale of *Walder* was that the evidence necessarily furnished by the accused on his successful motion to suppress illegal evidence was admissible against him on a subsequent occasion. In *Simmons v. United States*[37] the Court returned to the *Silverthorne* and *Shephard* reasoning. This Court held that testimony obtained from an accused in the course of his vindication of a constitutional right could not subsequently be used against him without violating his privilege against self-incrimination, thus, reaffirming *Miranda*.

A recent article[38] exploring the practicability of extending the teachings of *Walder* determined that an extension of *Walder* would be dubious on three grounds; "it violates its own requirements; it could gradually defeat the major policy of deterring unlawful police; and, it may tend to discourage defendants from testifying."[39] The sentiment expressed by the writer finds support in *Blair v. United States*.[40] "The teaching of *Walder* however valid in other contexts, appears irrelevant when a *Miranda* problem is presented."[41] In short, due process requires that the record disclose that the accused has been advised of his privilege and right to the assistance of counsel in addition to his privilege against self-incrimination.[42]

The *post-Miranda* trend, expressed in federal[43] decisions, which crystallizes the Warren Court position, does not jell with the recent *Harris* opinion. In fact, an earlier interpretation of *Walder* by Chief Justice Burger[44] appears somewhat contradictory to present thinking. In *Lockley v. United States*[45] Justice Burger, as lone dissenter, describes three factors necessary in order to use inadmissible evidence for impeachment. To provoke the rule in *Walder* the following three factors must be present:

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[36] See generally, State v. Brewton, 422 P.2d 581; Spann v. State, 448 S.W.2d 128; People v. Luna, 226 N.E.2d 586; People v. Wilson, 174 N.W.2d 79; Kelly v. King, 196 So.2d 525.

[37] 390 U.S. 377 (1968).

[38] *The Impeachment Exceptions to the Exclusionary Rules*, 34 U. Chi. L. Rev. 939 (1967).

[39] *Id.* at page 941.

[40] 401 F.2d 387 (1968).

[41] *Id.* at page 392.

[42] People v. Waterman, 175 N.E.2d 445, 448 (1961).

[43] United States v. Fox, 403 F.2d 97 (1968); United States v. Pinto, 394 F.2d 470 (1968); Breedlove v. Beto, 404 F.2d 1019 (1969); Groshart v. United States, 392 F.2d 172 (1968); Blair v. United States, 401 F.2d 387 (1968); Wheeler v. United States, 382 F.2d 998 (1968).

[44] Chief Justice Burger was sitting on the United States Court of Appeals for the District of Columbia Circuit.

> "The defendant must elect to take the stand; his testimony which conflicts with the inadmissible statements must do more than merely deny the elements of the crime for which he is being tried; and, the inadmissible statements should be received only to the extent that they do not admit the very acts which are essential elements of the crime charged."[46]

If these three factors had been applied to the present case it would appear that the Court may have rendered a contrary decision.

It seems somewhat apparent that Chief Justice Burger makes the unwarranted assumption that the accused is lying on the witness stand. The fallacy of such an assumption is that the same assumption may be made about the confession that was elicited from the defendant in the police station. This becomes evident upon examination of *Upshaw v. United States*.[47] Here the police admitted not only that the arrest was illegal for lack of probable cause, but that the sole reason for an illegal detention of at least 30 hours was the realization that unless some damaging statements could be elicited there was not a sufficient case against the defendant for the police to hold him. Forecasting the employment of *Harris*, one surmises that it provides unlimited incentive for illegal detention in that extended interrogation might produce damaging statements that could serve alternative purposes: If the defendant should relate different facts at his trial the statements could be used to discredit his testimony and weaken his defense. Or, they may simply discourage the defendant from taking the stand in his own defense. Justice Daily answered the challenge in this manner:

> "When called upon to deal with use of confessions for impeachment purposes, we have held that fundamental justice will not countenance accomplishment by indirection of that which it will not permit directly, and

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[45] 270 F.2d 915 (1959).

[46] *Id.* at page 919.

[47] 335 U.S. 410 (1948).

> have held that confessions otherwise incompetent do not become competent when offered to impeach either a witness or an accused."[48]

Mr. Justice Brennan, joined by Justices Black, Douglas, and Marshall dissented. Their opinion sets forth the proposition that *Walder* is wrongly construed by the majority giving rise to an incorrect conclusion. The four commandments of *Miranda* constitute the measuring rod for the admissibility of evidence. Reasoning from this premise, the dissenters are convinced that the majority decision will revive old problems that were otherwise settled. As a result police officers may revert to old tactics to secure a statement from the accused. They may go to any length . . . "so long as they use means consistent with threat-to-promise voluntariness and so long as they understand that they may file the information only for use to keep the defendant honest."[49] "This goes far toward undoing much of the progress made in conforming police methods to the Constitution."[50]

The duty to watch the watchman is considered primarily a legislative and executive function as opposed to judicial.[51] However, the Supreme Court has repeatedly rendered decisions which had the effect of legislative decisions.[52]

The issue posed by Mr. Justice Burger's present decision is whether the time has come to look for a more effective means of deterring illegal law enforcement tactics. His proposition would be an independent review body to deal with ill-behaved police officers.[53] Just how feasible a civilian Review Board may be is debatable. History has taught one lesson, however, no system of criminal justice can, or should survive if it comes to depend for its continued effectiveness on the citizen's abdication through unawareness of their Constitutional rights.[54] "We cannot adopt such a principle or practice in the administration of criminal law."[55]

Finally, the Court failed to distinguish between inadmissible evidence because of *irrelevance* and inadmissible evidence because of its *unconstitutionality*. Inadmissible evidence because of irrelevance may become relevant to a case once the defendant takes the witness stand and places his credibility in issue; not so with inadmissible evidence because of its unconstitutionality. A defendant does not render illegally obtained statements admissible merely by taking the stand. The impeachment procedure condoned by this Court has completely emasculated the protection afforded by *Escobedo* and *Miranda*.

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[48] People v. Pelkola, 166 N.E.2d 54, 58 (1960).

[49] State v. Brewton, 422 P.2d 581, 583 (1967).

[50] *Supra* note 1, dissenting opinion.

[51] Burger, *Who Will Watch the Watchman*, 14 Am. U.L. Rev. 1 at page 2 (1964).

[52] *Ibid.*

[53] *Id.* at page 17.

[54] *Supra* note 22 at page 490.

[55] *Supra* note 32 at page 450.

Kenneth M. Hoyt

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no interest in previous relations except through the State or County retirement accounts and the State deferred compensation plan.

a) State retirement – $12,600 through December 31, 1987

b) County retirement – $1444.68 through December 31, 1987

c) Deferred compensation – $9,375+ interest through December 31, 1987

No arrangement have been made regarding these funds.

d) Wheeler Avenue Church Bond – $1,100+ interest due 1990

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not own any stocks or bonds or interest in any concern except my wife's Flower shop. I would recuse myself if any conflict occurred. I do not anticipate any litigation or conflicts-of-interest in this area.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interests, gifts, rents, royalties, patents, honoraria, and other times exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by Ethics in Government Act of 1978, may be substituted here.)

See Attachment II.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Will comply - see Attachment III.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes. I served as assistant campaign manager for Judge Surry E. Davis, deceased, in his race for Justice of the Peace in 1974 and 1976. My duties included over-seeing telephone calls, giving advice, helping to plan fund-raisers and getting the vote out.
I served in a similar capacity for Robert L. Anderson in his bid for the state legislature in 1978.

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FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3209-

Page 1

Reporting Status (Check Appropriate Box)

☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

	Agency Use Only	OGE Use Only	
Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)		Termination Date (If Applicable) (Month, Day, Year)	
Reporting Individual's Name	Last Name BOYT	First Name and Middle Initial KENNETH M.	
Position for Which Filing	Title of Position UNITED STATES TRIAL JUDGE	Department or Agency (If Applicable) FEDERAL JUDICIARY	
Location of Present Office	Address (Number, Street, City, State and ZIP Code) 1307 San Jacinto 10thFl Houston, Tx 77002	Telephone No. (Include Area Code) (713) 655-2748	
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held NONE		
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination SENATE JUDICIARY COMMITTEE	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual Kenneth M. Hoyt	Date (Month, Day, Year) 11-1-87	
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)	
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)	
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)	

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

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278-109

NSN 7540-01-070-8444

SF 278 (Rev. [illegible])
FPM Chapter [illegible]
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name HOYT, KENNETH M.	**Assets and Income**	Page Number	2	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In B .OCK D, for any real property, .ocks, bonds, commodities futu s and other securities listed i . BLOCK A, did yo purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Sched. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Example:	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$60,000			
1	STATE OF TEXAS																					X					
2	FITCH FLORAL CO.					X															X($)						
3	UNITED SAV.DEF. COMP.			X																							
4	STATE RETIREMENT FUND			X																							
5	WHEELER AVE CH. BOND		X																								
6	NOTE REC.(TOLIVER)				X							X							X								
7	NOTE REC. (LUEDERS)				X							X							X								
8	NOTE REC. (ISHAM)						X					X								X							
9	REBECCA APTS					X				X						X											
10	SUMPTER APTS					X				X										X							

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FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name

HOYT, KENNETH M.

Page Number 3

Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☒

S or DC		Identification of Assets	Type of Transaction (X)				Amount of Transaction (X)					
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Example:	XYZ Common	X			2/1/83			X			
1												
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☒

S		Source (Name and Address)	Brief Description	Value
	Example:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1				
2				
3				
4				
5				
6				

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U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name
HOYT, KENNETH M.

Page Number	4	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts:

NONE ☐

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)				
						$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$1 ,001 to $2 ,000	Over $250,000
S or DC Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
	John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1	American Mort. Co. Houston, Tx	Mortgage on rental property	1981	16%	25yrs			X		
2	Pearl Fitch 3444 Blodgett Houston, Tex 77004	Mortg.on business Houston Tx	1977	10%	15yrs		x			
	John Lawton 11810 Bay Cedar Houston, Tx 77048	Realty investments Houston Tx	1979	-0-	10yrs		x			
3	Standard Savings 4310 Dowling Houston, Tx 77004	Mortgage on shop Houston, Tx	1984	16%	10yrs			x		
4	Edward M. JutziJr 12455 Queensbury Hou. Tx 770	2 Mort. on rental prop. Hou.Tx	1983	16%	7yrs			x		
5	Mark A. Vance 59 Huntsman Horn Circle Woodlands, Texas	Mortg. on rental prop. Hou. Tx	1983	10%	25yrs			x		
6	Unity Nat'l Bank 2602 Blodgett Houston, Tx 7700	Promissory note	1985	14%	4yrs	x				

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Home town, USA	7/78 ptnrship agmnt.

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Reporting Individual's Name	HOYT, KENNETH M.

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Page Number	5	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☒

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

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[illegible]

PERSONAL FINANCIAL STATEMENT

Name KENNETH M. & VEOLA L. HOYT

To: COMMITTEE ON THE JUDICIARY XXXX

Address 3334 South MacGregor Way

Houston, Texas 77021
City State

Telephone 713/741-6477

For the purpose of procuring and maintaining credit from time to time in any form whatsoever with the above named Bank, for claims and demands against the undersigned, the undersigned submits the following as being a true and accurate statement of its financial condition on the following date, and agree that if any change occurs that materially reduces the means or ability of the undersigned to pay all claims or demands against it, the undersigned will immediately and without delay notify the said Bank, and unless the Bank is so notified it may continue to rely upon the statement herein given as a true and accurate statement of the financial condition of the undersigned as of the close of business November 1, 1967, 19__.

ASSETS		LIABILITIES AND NET WORTH	
Cash on Hand and in Banks (Schedule 1)	$ 5,600	Notes Payable to Banks — Secured (Schedule 1)	$ -0-
U. S. Government Securities	-0-	Unsecured (Schedule 1)	16,250
Accounts, Loans and Notes Receivable (Schedule 2)	168,000	Notes Payable to Relatives	-0-
Cash Surrender Value Life Insurance (Schedule 3)	9,000	Accounts and Notes Payable to Others	-0-
Other Stocks and Bonds (Schedule 4)	2,400	Rents and Interest Due	-0-
Real Estate (Schedule 5)	637,000	Taxes Due (Schedule 6)	-0-
Automobiles — Number ( )	12,000	Liens on Real Estate (Schedule 5)	294,000
Other Assets (Itemize)		Other Liabilities (Itemize)	
Fitch Floral Co.	82,000	Mortgage on Fitch Floral Co	18,000
Personalty & household	40,000	Lawton Realty investments	36,000
Credit income tax	5,000	Household accounts	21,000
Rents & interest due	4,500		
Deferred Comp (thru 12/87	9,800	TOTAL LIABILITIES	375,250
Retirement State & County	13,655	NET WORTH	613,705
TOTAL ASSETS	$988,955	TOTAL LIABILITIES AND NET WORTH	$988,955

SOURCE OF INCOME		CONTINGENT LIABILITIES	
Salary State of Texas	$ 77,800	As Endorser or Co-Maker	$ 6,000
Bonus and Commissions	-0-	On Leases or Contracts	9,000
Dividends and Interest	300	Legal Claims	-0-
Real Estate Income Rents	22,200	Provision for Federal Income Tax paid in escrow	5,000
Notes Receivable	7,800	Other Special Debt	
Fitch Floral Co Profit	20,000		
TOTAL INCOME	$128,100		

INSURANCE COVERAGE	
Fire Insurance — Buildings Almeda	$100,000
Household Effects and Autos	200,000
Liability Insurance — Automobiles	50,000
Personal 100,000/300,000	
General Public	
Other Insurance Sumpter	117,000

COMPARISON OF MONTHLY INCOME AND EXPENSES		
Net Monthly Income		$ 6,700
Rent or Home Payment	$ 1,326	
Food and Utilities	750	
Incidentals	1,500	
Avg. Amt. Paid on Open Accts.	2,100	
TOTAL EXPENSES		$ 5,676
DIFFERENCE BETWEEN INCOME AND EXPENSES		$ 1,024

Form 112-BNB

(SEE OTHER SIDE)

SCHEDULES

No. 1. Banking Relations. (A list of all my bank savings and loan accounts.)

Name and Location	Cash Balance	Amount of Loan	Maturity of Loan	How Endorsed, Guaranteed or Secured
Unity Nat'l Bank	$ 12,000	$ 16,000	Monthly	unsecured
Union Bank	4,250	10,000	90day	unsecured
Standard Savings Assn	1,600			

No. 2 Accounts, Loans and Notes Receivable. (A list of the largest amounts owing to me.)

Name and Address of Debtor	Amount Owing	Age of Debt	Description or Nature of Debt	Description of Security Held	Date Payment Expected
Robert O. Isham	122,000	5yrs	Mortg. on realty	Office Bldg	1992
Chuck Toliver	26,000	3yrs	" " "	Lake house	monthly
				for 10 years	
Eric Lueders	20,000	7yrs	" " "	4Plex Apts.	monthly
				till	1999

No. 3 Life Insurance.

Name of Person Insured	Name of Beneficiary	Name of Insurance Co.	Type of Policy	Face Amount of Policy	Total Cash Surrender Value	Total Loans Against Policy	Amount of Yearly Premium	Is Policy Assigned
K.M. Hoyt	Veola	N.W.Mutual	Life	200k	$4,000	$7,000	1946	no
V.L. Hoyt	Kenneth	" "	"	50k	5,000	-0-	400	"
K.M.&V.L.	Each	F.T.D. Trust	"	100Kea	-0-	-0-	24	"

No. 4 Other Stocks and Bonds.

Face Value Bonds No. Stock Shares	Description of Security	Registered in Name of	Cost	Present Market Value	Income Received Last Year	If Pledged State to Whom
$2,400	ChurchBond	Bearer	$1,100	$2,400	none	no
	Matures in 1990					

No. 5. Real Estate. The legal and equitable title to all the real estate listed in this statement is solely in the name of the undersigned, except as follows: ____________________

Description or Street No.	Dimensions or Acres	Improvements Consist of	Mortgages Or Liens	Due Dates and Amounts of Payments	Assessed Value	Present Market Value	Unpaid Taxes	
							Year	Amount
3817 Rebecca	Lots(2)	6units Apts	$67,000	$950 mo.		$82,000	none	
1905 Sumpter	Lot	6units Apts	65,000	749 mo.		95,000	none	
4819 Almeda	Lots(2)	bldg	49,000	1206 mo.		125,000	none	
3334 S.MacG	1/3acre	Homestead	95,000	1326 mo.		300,000	none	
Farm land	35Acres	San AugustineCounty, Texas(no improv.)				35,000	none	

The undersigned certifies that the information inserted on each side hereof has been carefully read and is true and correct.

Date 11-1-87

Signed: Kenn. Hoyt

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

> As a practicing attorney, I have (1) prepared wills for former clients who could not afford them; (2) been appointed by numerous state and county court judges to handle court-appointed cases; (3) handled numerous child-support cases for the court at no cost to the mother. I devoted the time necessary to handle each, sometimes as many as 15 hours.
>
> As a judge, I have given of my time to the Salvation Army, elementary schools, Humble High School, and others upon request.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

> I belong to the Business & Professional Men's Club, which is an all male organization, except for an honorary membership to former Congresswoman Barbara Jordan. I am not aware of any individual females who were denied membership and am not aware of any who applied. I do, however, understand that exclusion on account of sex is not a valid basis for denial of membership. During my membership I have done nothing to encourage or discourage female membership because it is an open forum organization depending to a great extent on female leadership for many of our programs.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

> Yes, there is a committee with the State Bar of Texas. I am not aware of their activities and believe that they would be involved at this very time.
>
> My nomination and selection process began with a request to Senator Gramm's office for an application. After completing it I was permitted to interview with the Senator's Vacancy Committee. Following the approximately nine interviews, I, in addition to three other candidates, was invited to interview with Senator Gramm. After this interview, Senator Gramm selected my name to submit to President Reagan. I also interviewed with members of the Justice Department.
>
> This process has been lengthy and thorough but I have enjoyed the opportunity, and am able to appreciate the complexity of the process.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

> No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

5. When I appeared before Senator Phil Gramm's vacancy committee, one of the questions asked of me was why I wanted to be a federal judge. My answer to that question is somewhat appropriate in responding to this present question on "judicial activism."

1. I have no hidden agenda, but seek only to preserve and protect the constitution and laws of this country.

2. I possess a constrained view of the role that judges should play in our society, i.e., I am not a result oriented person.

3. I believe in equality of opportunity over equality by result.

4. I have an abiding faith in established legal principles, and for the doctrine of stare decisis.

5. I believe that judges and parole boards should encourage victims and their families to participate in advance in the sentencing and release of convicts especially in the assaultive crimes.

6. I believe in protection of victims and witnesses and in restitution, to insure confidence in our system.

7. I believe that we should prohibit convicts by making a profit from selling his story of his crime, or alternatively, a portion of the proceeds from any sale should be used for restitution.

8. I am and will always be a fair and impartial judge, making my decision based on facts and law.

9. I am a God-fearing man whose faith is deep and active; rooted in a belief in God, fatherhood, and the brotherhood of man.

10. Finally, I believe as John Marshal states, "It is emphatically the province and duty of the judiciary department to say what the law is"....

Because the Supreme Court says what the law is, trial judges are generally bound by stare decisis, and if they are to do their jobs well, they must adhere to the rule of law.

Often judges see wrongs that seek correction, or problems that require solutions. To the extent that a judge fails to respect the separation of powers or fails to exercise judicial restraint, he simply becomes a policy maker employing the judicial system as a vehicle for his subjective decisions. Our duty is not to become administrators, but to require administrators to do their jobs.

While I cannot speak with authority about the federal judiciary, I am keenly aware of the "turf struggle" that exists between the Texas legislature and the Texas Supreme Court. There are decisions by the Texas Supreme Court that state through common law, rules that has been rejected statutorily by the legislature.

I view the role of a federal trial judge to be one where discretion is exercised carefully, and then within the bounds of established legal principles.

ABA
AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

November 25, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: KENNETH M. HOYT
United States District Court
for the Southern District of Texas

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Kenneth Hoyt for appointment as Judge of the United States District Court for the Southern District of Texas.

A substantial majority of our Committee is of the opinion that Judge Hoyt is "Well Qualified" for this appointment. The minority found him to be Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

GEORGE M. MAROVICH

Birth:	January 2, 1931	East Hazel Crest, Illinois
Legal Residence:	Illinois	
Marital Status:	Married	Lois Ann Adler Marovich 4 children 2 foster children
Education:	1948 - 1950	Thornton Community College A.A. degree
	1950 - 1954	University of Illinois College of Law B.S. degree in 1952 J.D. degree in 1954
Bar:	1955	Illinois
Experience:	1954 - 1959	Chicago Title & Trust Co. Attorney
	1955 - 1959	Sole practitioner Richton Park, Illinois
	1959 - 1966	Jacobs & Marovich Partner
	1966 - 1976	South Holland Trust & Savings Bank Vice-President and Trust Officer
	1976 - present	Judge, Circuit Court of Cook County
Office:	2408 Daley Center Chicago, Illinois 60602 312 443-4158	
Home:	601 E 169th Street South Holland, Illinois 60473	

To be United States District Judge for the Northern District of Illinois

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

GEORGE M. MAROVICH

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   George Michael Marovich

2. Address: List current place of residence and office address (es).

   Residence: 601 E. 169th Street
   South Holland, Il. ~~60473~~
   Office: 2408, Daley Center
   Chicago, Il. 60602

3. Date and place of birth.

   January 2, 1931 East Hazel Crest, Il.

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address (es).

   Married to Lois Ann Marovich, nee Adler. She is a homemaker.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   1. Thornton Community College - 1948-1950. Graduated with an Associate of Arts degree.

   2. University of Illinois College of Law - 1950-1954
      Received Bachelor of Science in Law in 1952.
      Received Juris Doctor in 1954.

      Note: This was a special program, no longer in existence, whereby I spent four years in law school and received two degrees in law after completing two years of pre-law studies.

   3. I have done post degree work at the University of Wisconsin College of Law (American Bankers Association), University of Miami Law School (Estate Planning Institute) and Northwestern University Law School (The National Trust School). All courses were between 1968 and 1972, and consisted of resident sessions of four to six weeks with correspondence work between sessions.

   4. The National Judicial College - University of Nevada - Reno

      (a) General Jurisdiction - Sept. 17 - October 16, 1978

      (b) The Judge and Trial - June 15-27, 1980.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1954-1959 - Attorney for Chicago Title & Trust Co.
111 W. Washington Street
Chicago, Illinois 60602

Simultaneously with my employment with C.T. & T., I maintained a general practice in Richton Park, Illinois. (noted above)

1959-1966 - Partner in the firm of Jacobs & Marovich
16231 Wausau Avenue
South Holland, Illinois 60473

June, 1966 to November, 1976 - Vice-President and
Trust Officer, South Holland Trust & Savings Bank
16178 South Park Avenue
South Holland, Illinois 60473

November 1976 to date - Judge, Circuit Court of Cook County, Illinois
Note: From 1977 to date, I am a part-time instructor at Thornton Community College. I teach Criminal Law and Evidence.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

1. South Suburban Bar Association - 1955 to date
   Secretary - 1960; President - 1961

2. Illinois Judges Association - 1976 to date
   Director - 1984 to date

3. Chicago Bar Association - 1967 to 1976

4. Chairman - Section on Evidence, Illinois Judicial Conference

   Appointed by Illinois Supreme Court to conduct regional seminars on evidence for sitting judges throughout the state. One seminar was in Effingham, November 13-15, 1986. A second was conducted in Rockford, April 9-11, 1987 and a third is scheduled for Peoria in April, 1988.

5. Vice-Chairman, Committee on Injunctions and Declaratory Relief - Illinois Judicial Conference

   Conducted seminar in Chicago at 1987 Annual Meeting on September 2, 3, and 4, 1987

6. Member - Nominating Committee, Circuit Court of Cook County This is a five-judge committee that screens and nominates candidates for associate judgeships, Board of Election Commissioners and other court appointees.

7. Trustee - Marriage Fund of the Circuit Court of Cook County - Responsible for the expenditure, for judicial purposes, of all fees collected in the Marriage Court.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

    None

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

    Supreme Court of Illinois - May 19, 1955

    Supreme Court of the United States of America - May 4, 1970

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

    None

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent October, 1987

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was elected as a Judge of the Circuit Court of Cook County in November, 1976. At the completion of a six-year term, I successfully ran for retention in 1982. My current term expires in 1988.

The Circuit Court of Cook County is a trial court of unlimited general jurisdiction.

For a few months, I was assigned to Housing Court. From early 1977 to 1985, I was assigned to the Criminal Division and tried major felony cases only. From 1985 to present, I have been assigned to the Chancery Division where I try cases very similar in nature to those tried in the Federal District Court.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I. Significant Opinions:

(1) People v. Jearl Wood (80 C 7410) - The first case in Illinois where post traumatic stress disorder was asserted as an insanity defense in behalf of a Viet Nam war veteran.

(2) People v. J. R. Jenkins (79 C 1987) - For the first time in Illinois, as trial judge, I allowed grand jury testimony to be received as substantive evidence. This decision was affirmed by the Appellate Court (104 Ill. App. (3) 522) and subsequently adopted by statute (Illinois Revised Statute, Ch. 38 - Sec. 115.10.1).

(3) The North River Insurance Co. v. Stephen Byer, et al. (85 CH 5589) - This was an insurance fraud case that arose out of a fire that occurred at the Byer Museum of the Arts. At issue were two questions: (1) the necessary elements to prove fraud by overstating claims and (2) the requisite burdens of proof.

(4) Village of Northbrook v. County of Cook, et al. (82 L 11368) - This was a case involving the construction of two multi-story office towers in unincorporated Cook County. At issue is the standing of an adjoining municipality to object to county zoning and planning and what showing the municipality must make in order to prevail.

(5) Chicago Park District, et al. v. Netsch, et al. (86 CH 5961) - This was a case that involved a dispute between the Mayor and the City Council over reorganization of the Chicago Park District. Two issues were presented to the court. First, in a City Council that was divided politically 25 to 25, did the Mayor have the right to cast the tie-breaking vote. Second, did the newly constituted Chicago Park District Board have the authority to create the position of Executive Vice-President and subordinate the General Superintendent to that new officer.

(6) Local 143 International Union of Operating Engineers v. Board of Education of the City of Chicago (87 CH 67) - This case involved the question of Home Rule Authority and whether certain employees were protected by the civil service law.

In the Spring of 1987, I granted summary judgment in favor of the union. The Board of Education appealed and my judgment was affirmed on May 14, 1987, ____ Ill. App. (3) ______, 509 N.E. (2) 512. The case is currently on appeal to the Illinois Supreme Court.

(7) U.S.F. & G. v. Wilkin (84 CH 11676) - A case of first impression relating to the question of insurance coverage to pay the cost of removal of toxic asbestos from public buildings, as now mandated by law.

(8) Boblar v. Chicago Board of Education (83 CH 2188) - This case involved the method of appraising for leasehold purposes, the value of the school board land upon which substantial long-term improvements were erected.

(9) People v. Willie Morrow and Maurice Jones - (82 C 2626 & 80 CH 2637 - consolidated) - This case involves some interesting search and seizure issues. The decision was affirmed on appeal - 104 Ill. App. (3) 995.

(10) People v. Steven Miller (79 C 935) - A murder case that raised issues of probable cause. Fifth Amendment violations and evidence of other crimes. The decision was affirmed on appeal - 91 Ill. App. (3) 1031.

II. Reversals

People v. Raymond Hall - 104 Ill. App. (3) 1064 Remanded for new trial. Evidence of other crimes improperly admitted.

People v. Patricia Hancock - 113 Ill. App. (3) 564 Conviction reduced from murder to manslaughter since the State did not prove requisite intent.

People v. Sterling Jackson - (Opinion not published. See copy attached) - Remanded for new trial. Incompetency of counsel in that alibi witness was not called.

People v. Gene Freman - (Opinion not published. See copy attached) - Court's refusal to grant motion to quash arrest was in error.

People v. Melvin Jones - 157 Ill. App. (3) 1006 (2 to 1 opinion)
Remanded for new trial due to admissibility of hearsay evidence.

Barrows v. Northwestern Hospital - 153 Ill. App. (3) 1983 (Now on appeal to Illinois Supreme Court) On review, the Illinois Appellate Court eliminated the distinction under existing law as to the reviewability of staff admission decisions by private hospitals as opposed to public hospitals.

Gerson Field v. Rollins - 156 Ill. App. (3) 786 (Now on appeal to the Illinois Supreme Court) As case of first impression, the Appellate Court ruled that an attorney could compel the payment of his fees out of the so-called "Second Injury Fund" established by the Illinois Workers' Compensation Act.

Thomas Kadlec v. I.D.P.A. - 155 Ill. App. (3) 384 Costs incurred by plaintiff are not recoverable by way of sanction, but must be collected through the Illinois Court of Claims.

Ann V. Painter v. Board of Trustees - 161 Ill. App. (3) 26
Authority of Board of Trustees to approve the General Assistance Budget of the Town Supervisor.

Michael Sweeney v. Citicorp - 157 Ill. App. (3) 47
The question before the Court was the retroactive application of amendments to the Illinois Usury Laws.

NOTE: In 164 other cases, my decisions were affirmed on appeal.

III. Citations of Significant Opinions on Federal and State Constitutional Issues

None with any precedential value.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Elected - Board of Trustees of Thornton Community College in April, 1970 to an unexpired term. Reelected in April, 1971 and again in April, 1974 to full three-year terms. Elected Chairman of the Board by my fellow trustees each year from 1971 to my resignation in 1976.

Appointed - Chairman, Board of Fire and Police Commissioners of Village of South Holland, 1966 to 1976. I was required to resign both positions upon becoming a Circuit Court Judge.

In 1984, I was unsuccessful as a candidate for Illinois Appellate Court Judge.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.

No

(2) whether you practiced alone, and if so, the addresses and the dates.

Yes - 1955 to 1959

3901 Sauk Trail
Richton Park, Illinois 60471

(3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

1954-1959 - Attorney for Chicago Title & Trust Co.
111 W. Washington Street
Chicago, Illinois 60602

Simultaneously with my employment with C. T. & T., I maintained a general practice in Richton Park, Illinois. (noted above)

1959-1966 - Partner in the firm of Jacobs & Marovich
16231 Wausau Avenue
South Holland, Illinois 60473

(4) June, 1966 to November, 1976 - Vice-President and Trust Officer, South Holland Trust & Savings Bank
16178 South Park Avenue
South Holland, Illinois 60473

(5) Circuit Court Judge - 1976 to date

b. 1. What was the general character of your practice dividing it into periods with dates if its character changed over the years.

1955-1959 - Attorney for Chicago Title & Trust Company dealing primarily with suit preparation and examination of condemnation, foreclosure and all types of chancery proceedings. Simultaneous with my employment with C. T. & T., I maintained a general practice in Richton Park, Illinois which led to my partnership.

1959-1966 - Partner in the firm of Jacobs & Marovich, a general practice in South Holland, Illinois. We had a widely diversified practice and handled criminal and civil litigation of all types. We also represented twelve south suburban villages and school districts as corporation counsel or prosecutor.

June, 1966 to November, 1976 - Vice-President and Trust Officer - South Holland Trust & Savings Bank. I had a legal responsibility in the areas of commercial law, probate, real estate, taxation, trust law and estate planning and consulted in the areas of my expertise with other lawyers.

2. Describe your typical former clients, and mention the areas, if any, in which you specialized.

In my early practice, I represented little people who had, what some would consider, little problems. The Village of East Hazel Crest was my first client and I represented the Village and a great number of the villagers individually in condemnation and related proceedings when the Illinois Toll Road was erected through the middle of town. I also was instrumental in obtaining Chicago water for the Village and handling all bonding matters.

When I entered the practice full time, we represented other municipalities, including the Village of South Holland and helped guide that Village through a period of rapid expansion. Zoning, subdivision control, infrastructure, planning, ordinance recodefication, bonding and similar matters were addressed to provide for orderly growth. I also organized and incorporated the Village of Lynwood. During that period, my practice was general and diversified with heavy concentration in municipal law, taxation and commercial law, but involved little litigation, other than prosecutorial duties as village attorney for approximately twelve villages.

Among clients that we represented was the South Holland Trust & Savings Bank. As it continued to grow into a major financial institution, the Board of Directors asked me to join them on a full-time basis.

c. 1. Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

From 1955 to 1959, I appeared in local courts on an infrequent basis. From 1959 to 1966, I appeared in state courts of record on a weekly basis to prosecute traffic and ordinance cases for the various municipalities I represented. I occasionally appeared in other state courts on divorce matters, tax matters and minor suits involving clients who I represented in other matters. I was not primarily a litigator. Mine was an office practice. From 1966 to 1976, I did not appear in court at all.

2. What percentage of these appearances were in

(1) Federal courts. None
(2) State courts of record. 90%
(3) Other courts. 10%

3. What percentage of your litigation was

(1) Civil. 80%
(2) Criminal. 20%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   None

5. What percentage of these trials were

   (1) Jury. N/A
   (2) Non-jury. N/A

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    (a) the date of representation;
    (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
    (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

    As previously indicated, I was not a litigator prior to becoming a judge.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

    Prior to becoming a judge, my most significant legal activities have been in the area of muncipal law, finance, taxation and trusts. I feel that I personally played a significant role in the orderly development of the Villages of South Holland and East Hazel Crest and the creation of the Village of Lynwood.

    I teach criminal law and criminal evidence at Thornton Community College. I am also Chairman of the Section on Evidence for the Illinois Judicial Conference. In that role I conduct seminars for other judges throughout the state. I have also conducted seminars in Chancery practice for the Chicago Bar Association.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I will receive a pension from the Illinois Judicial Retirement Fund.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I foresee none, but should anything arise that might create an appearance of impropriety, I will, of course, consult all available ABA and judicial conference guidelines and recuse myself if that seems appropriate.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   (See copy of Financial Disclosure Report)

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   (See attached)

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   From about 1962 to 1976, I was a Republican Precinct Captain. As such, I was of some general help to Republican candidates for various offices. During much of that time, I was also a member of former Congressman Edward Derwinski's Citizens Committee.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   Supreme Court Rules forbid judges from participating in non-judicial capacities, including charities. Before 1976, I represented a number of indigent clients. I was a Lions Club member involved in projects for the the blind and was Treasurer of the South Holland Community Chest. Most of my pro bono work was in behalf of Thornton Community College and its Student Aid Foundation. As Chairman of the Board of Trustees, I would estimate that I devoted substantial amounts of time for a six-year period.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organizatoin that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

   The only two organizations in which I currently hold membership are the Illinois Judges Association and the South Suburban Bar Association. Both organizations are open to all people.

   I belonged to the South Holland Lions Club for about ten years. It was an all male club. I resigned in 1976. While I am not aware of current policy, I think the Lions Club membership is now open to women.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I submitted my name to Congressman Robert Michel and the Illinois Republican congressional delegation. On behalf of Congressman Michel, I was screened by the Illinois State Bar Association, the Chicago Bar Association, the Federal Bar Association and the Chicago Council of Lawyers. I was rated either "Qualified," "Well Qualified" or "Exceptionally Well Qualified" by each of those groups.

After those evaluations and consideration of my Personal Data Questionnaire, I was personally interviewed by Congressman Michel and the congressional delegation. Congressman Michel, thereafter, recommended my nomination.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

If a judge fullfills his or her role in the judicial process, criticism is not merited. That role, as I see it, is to interpret the law of the land - from regulations and statutes to the constitution itself - and apply it to specific facts presented by individual cases.

AFFIDAVIT

I, George M. Marovich, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 3, 1988
(DATE)

George M. Marovich
(NAME)

Jerome J. Staszak
(NOTARY)

SF 278 (Rev. 1/89)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]

Reporting Status *(Check Appropriate Box)*		Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)*
☐ Incumbent	☒ New Entrant, Nominee, or Candidate ☐ Termination Filer			
Reporting Individual's Name	Last Name Marovich	First Name and Middle Initial George M.		Termination Date *(If Applicable)* *(Month, Day, Year)*
Position for Which Filing	Title of Position District Court Judge	Department or Agency *(If Applicable)* Northern District of Illinois		
Location of Present Office	Address *(Number, Street, City, State and ZIP Code)* 2408, Daley Center Chicago, Illinois 60602	Telephone No. *(Include Area Code)* (312) 443-4158		
Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held None			
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Senate Judiciary Committee	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No		
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual	Date *(Month, Day, Year)*		
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*		
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*		
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*		

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I (Liabilities)**—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II (Agreements and Arrangements)**—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

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278-109

NSN 7540-01-070-8444

U.S. Office of Personnel Management

Reporting Individual's Name	Assets and Income	Page Number	Schedule
Marovich, George M.		1	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Sched. B Part I for these assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Example:	X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$50,000			
1	Common stock South Holland Tr.&Sav.			X					X								X										
2	IRA South Holland Tr.& Sav.			X							X						X										
3	Limited Partnership Berwyn Plaza Partnership			X											Ptnrshp Income		X							$190			
4	Bank Accounts South Holland Tr.&Sav.				X						X								X								
5	Prudential Life Ins.		X								X						X										
6																											
7																											
8																											
9																											
10																											

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FPM Chapter 735
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name

Marovich, George M.

Page Number	2	Schedule B	

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☒

S or DC		Identification of Assets	Type of Transaction (X) Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (X) $1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Example	X Y Z Common	X			2/1/83			X			
1												
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only: Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. **Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.**

NONE ☒

S		Source (Name and Address)	Brief Description	Value
	Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1				
2				
3				
4				
5				
6				

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[redacted]

SF 278 (Rev. 1/83)
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U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name
Marovich, George M.

Page Number	3	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☒

		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)				
							$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC	Examples	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1											
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/75 ptnership agmt.

[redacted]

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Form Approved
OMB No. [illegible]

Reporting Individual's Name
Marovich, George M.

Page Number 4

Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83
	Thornton Community College	Non-profit education	Part-time instructor	9/77	date

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	State of Illinois	Services as Judge of the Circuit Court of Cook County, Illinois

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	50	000	
U.S. Government securities—add schedule			
Listed securities—add schedule			
Unlisted securities—add schedule	15	000	
Accounts and notes receivable:			
Due from relatives and friends	7	500	
Due from others			
Doubtful			
Real estate owned—add schedule	150	000	
Real estate mortgages receivable			
Autos and other personal property	50	000	
Cash value—life insurance	2	500	
Other assets—itemize:			
Pension Contributions	71	000	
Limited Real Estate	10	000	
Partnership			
I.R.A.	11	000	
Total assets	367	000	

LIABILITIES			
Notes payable to banks—secured	4	800	
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due	1	200	
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule			
Chattel mortgages and other liens payable			
Other debts—itemize:			
Total liabilities	6	000	
Net worth	361	000	
Total liabilities and net worth	367	000	

CONTINGENT LIABILITIES	0		
As endorser, comaker or guarantor	0		
On leases or contracts	0		
Legal Claims	0		
Provision for Federal Income Tax	0		
Other special debt	0		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	No		
Are you defendant in any suits or legal actions?	No		
Have you ever taken bankruptcy?	No		

Schedule:

Unlisted Securities:

Stock - South Holland Trust & Savings Bank

Real Estate Owned:

Personal Residence - 601 E. 169th Street
South Holland, Illinois 60473

AMERICAN BAR ASSOCIATION **Standing Committee on Federal Judiciary**
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

February 17, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: GEORGE M. MAROVICH
United States District Court
for the Northern District of Illinois

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of George M. Marovich for appointment as Judge of the United States District Court for the Northern District of Illinois.

Our Committee is unanimously of the opinion that Judge Marovich is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Roger Joseph Marzulla

2. Address: List current place of residence and office address(es).

Home:

3309 Woodley Road, N.W.
Washington, D.C. 20008

Work:

Department of Justice
10th and Constitution Avenue, N.W.
Room 2603
Washington, D.C. 20530

3. Date and place of birth.

August 12, 1947
Glendale, California

4. Martial Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

I am married to Nancie G. Marzulla, a lawyer with the Washington, D.C. firm of Verner, Liipfert, Bernhard, McPherson and Hand, 1660 L Street, N.W., Suite 810, Washington, D.C. Her maiden name was Nancie Gail Cain.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

I attended the University of California at Berkeley from September 1964 until January 1966, when I transferred to the University of Santa Clara from which I graduated in 1968 with a Bachelor of Arts in Political Science. I commenced law school at the University of Santa

Clara School of Law in September 1968 and graduated magna cum laude and first in the class in June 1971 with a Juris Doctor degree.

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Upon graduation from law school, I joined the San Jose, California law firm of Mager, Matthews and Neider in September 1971, becoming a partner in 1974. In 1977 I helped form a new law firm, Matthews and Marzulla, in which I remained a partner until 1981 when I left to become the President of Mountain States Legal Foundation in Denver, Colorado.

In January 1983, I joined the Department of Justice, Land and Natural Resources Division, in Washington as a special litigator, becoming a Deputy Assistant Attorney General in 1984. I became Acting Assistant Attorney General in 1987.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I attended law school under a partial scholarship my first year, and full tuition scholarship my second and third years.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

I joined the California Bar Association in January 1972, and have retained my license to practice in that state to the present date. (I am currently on inactive status.) In 1982, I took the bar examination in Colorado and have remained licensed to practice since that date. (My current status is inactive.) I was admitted to the District of Columbia Bar Association in 1985 (active status). I was also a member of the Santa Clara County, California, Bar Association from 1972 to 1981, and a member of the California State Bar Disciplinary Committee from 1979 to 1981. I was a member of the American Bar Association from 1972 until 1987. I have been a member of the Federalist Society from 1984 to the present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

I have been admitted to practice before the following courts:

Supreme Court of California (1972),
Supreme Court of Colorado (1982),
Court of Appeals of the District of Columbia (1985);
Federal District Court for the Northern District of California (1972),
District of Colorado (1982);
Federal Court of Appeal for the Ninth Circuit (1972),
Tenth Circuit (1982),
D.C. Circuit (1982),
Third Circuit (1984),
First Circuit (1987);
U.S. Supreme Court (1975).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal

policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have published the following articles:

ARTICLES

1. Comment, Professional Responsibility in Client Representation -- A Re-evaluation, 69 Santa Clara Lawyer 112.

2. Marzulla, Federalism Implications and OCSLA Section 8(g), 2 National Resources and Environment (Spring 1986).

3. Marzulla, Prosecuting Environmental Crimes: A Success Story, Investigators' Journal, Fall 1987, at 13.

4. Marzulla, Lands Division Confronts the Emerging Need for Civil and Criminal Environmental Enforcement, National Environmental Enforcement Journal, Dec. 1987 - Jan. 1988, at 3.

At copy of these articles is attached.

13. Health: What is the present state of your health? List the date of your last physical examination.

Except for the fact that I am blind, my health is excellent. My last physical examination was in September 1987.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Apart from my service with the U.S. Department of Justice (described above), I have not held a public office, elective or appointive, nor have I run for any elective office.

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a judicial law clerk.

2. whether you practiced alone, and if so the addresses and dates;

I have never practiced law alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

I began my law practice in September 1971 with the law firm of Mager, Matthews and Neider, then located at Suite 600, Bank of America Building, First and Santa Clara Streets, San Jose, California. (That firm no longer exists.) I became a partner in 1974, when the firm was renamed "Mager and Matthews." In 1977, I helped form a new law firm named Matthews and Marzulla, with offices at Suite 1400, Two North Second Street, San Jose, California. In 1981, I left the law firm to accept the position of President of Mountain States Legal Foundation, located at Suite 600, 1200 Lincoln Street, Denver, Colorado.

In 1983, I joined the U.S. Department of Justice, Land

and Natural Resources Division, 10th & Constitution Avenue, N.W., Washington, D.C. as a special litigator. I became a Deputy Assistant Attorney General in 1984 and Acting Assistant Attorney General in 1987.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My private practice in San Jose was a litigation practice with principal emphasis on real estate. I also handled some personal injury, commercial and other miscellaneous matters.

As President of Mountain States Legal Foundation, a public interest firm, I directed the litigation efforts and provided general management for the organization.

As a special litigator for the Land and Natural Resources Division, I handled a broad array of environmental, land management and natural resource litigation. As a Deputy Assistant Attorney General for the Division, I supervised the general operation of various sections of the Division, including the General Litigation, Environmental Defense, Environmental Enforcement, Environmental Crimes and Wildlife and Marine Resources Sections, and handled some litigation matters. As Acting Assistant Attorney General for the Division, I have assumed overall responsibility for the operation of the Division.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In private practice, my typical

client was an individual or firm associated with the real estate business (e.g., broker, buyer, seller, lender, borrower or owner). As a public interest lawyer, we generally represented individuals or associations who, although they had an interest in the subject matter of the litigation, either lacked the funds or the financial incentive to participate in litigation of substantial public interest. Clients included legislators, trade associations, small businessmen and individuals.

As a lawyer for the Department of Justice, I have always represented the United States.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently when I was in private practice (1972 - 1981), and as a special litigator for the Justice Department (1983-84). I have appeared in court much less frequently in my other positions.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

During private practice (1972-81) I appeared in state court about 90% of the time, and federal court about 10%. Since 1981, my appearances have been almost exclusively in federal court.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

My litigation experience has been about 99% civil, although I have for several years been substantially involved in directing the criminal enforcement programs of the Land and Natural Resources Division.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   I roughly estimate that I have tried 75 or more cases to verdict or judgment, including jury trials, bench trials, and appeals. I was Chief Counsel or sole counsel in all these matters.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

   I estimate that jury trials made up approximately 10% of these cases.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    (a) the date of representation;
    (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
    (c) the individual name, addresses, and telephone number of co-counsel and of principal counsel for each of the other parties.

1. Environmental Defense Fund v. Heckler, No. 82-3514 (D.D.C., Consent Decree entered May 27, 1983). Judge: Johnson. Opposing Counsel: Bruce Ennis, Ennis, Friedman, Bersoff, and Ewing, 1200 17th Street, N.W., Washington, D.C. 20036, Phone 775-8100. Co-counsel: Michael Steinberg, Environmental Defense Section, Land and Natural Resources Division, U.S. Department of Justice (Now with Morgan, Lewis, & Bockius, 1800 M Street, N.W., 8th Floor, Washington, D.C. 20036, Phone 728-1962). Time of representation: 1983-1984.

This was a suit to require the establishment of the Agency for Toxic Substances and Disease Registry (ATSDR) as required by the 1980 Superfund law. I negotiated a consent decree which formally established that agency and defined its responsibility.

2. In re: United States of America, No. 87-1003 (1st Cir. February 4, 1987). Judges: Campbell, Breyer and Selya. Opposing Counsel: Stanley M. Brown, Brown and Nixon, 8 Merrimack Street, Manchester, NH 03101, Phone (603) 669-8080 and Paul J. Lambert, Dana and Gould, 1724 Massachusetts Avenue, N.W., Washington, D.C. 20036, Phone 822-9320. Co-counsel: Anne S. Almy and William B. Lazarus, Land and Natural Resources Division, U.S. Department of Justice, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, Phone 633-4168. Time of representation: 1986-1987.

I helped brief, and argue to the First Circuit, a petition for a Writ of Mandamus in connection with an ongoing trial concerning a Superfund site in New Hampshire. The petition sought to establish the principle that the decisions of the EPA Administrator regarding clean-up plans are to be reviewed on the administrative record as required by the Superfund Amendments of 1986. This principle is necessary to an orderly clean-up program as it places the primary responsibility for remedy design in the EPA rather than in the Federal District Court.

3. United States and the State of New York v. Hooker Chemical and Plastics, et.al, No: 79-987 (W.D.N.Y. Stipulation entered

June 26, 1984). Judge: Curtin. Opposing Counsel: John Quarles, Morgan, Lewis & Bockius, 1800 M Street, N.W., 8th Floor, Washington, D.C. 20036, Phone 872-5118. Co-counsel: Nancy Firestone, 10th & Constitution Avenue, N.W., Room 1521, Washington, D.C. 20530, Phone 633-5271. Time of Representation: 1983-1984.

As a Special Litigator, I negotiated the workplan for a remedial investigation (RI) to be undertaken at this hazardous waste site, immediately adjacent to Love Canal in Niagara Falls, New York. This case was an early prototype for the RI Consent Decree, helping to establish the process which is currently used to design and implement Superfund clean-ups under the 1986 CERCLA Amendments.

4. United States v. Niagara Falls, No. 81-363C (W.D.N.Y. Filed May 6, 1981). Judge: Curtin. Opposing Counsel: Carl E. Mooradian, Corporation Counsel, City of Niagara Falls, 745 Main Street, Niagara Falls, New York 14302, Phone (716) 278-8199. Peter A.A. Berle, Special Counsel, City of Niagara Falls (Now with with the National Audubon Society, 950 3rd Avenue, New York, New York 10022, Phone (212) 832-3200. Co-counsel: None. Time of Representation: 1983-1984.

I negotiated a consent decree for the reconstruction of the Niagara Falls Wastewater Treatment Plant which had been up to that date the most polluting publicly-owned treatment works in the country.

5. Southwest Diversified, et al. v. City of Brisbane, 652 F.Supp. 788 (N.D. Cal. 1986). Judge: Lynch. Counsel for Plaintiff: Paul R. Hamilton, Memel, Jacobs, Pierno, Gersh and Ellsworth, 1801 Century Park East, Suite 2500, Los Angeles, CA 90067. Counsel for defendant: Ann Broadwell, Adams, Broadwell, and Russell, 1875 South Grant Street, Suite 600, San Mateo, CA 94402. Co-counsel for the United States as amicus: Donald Carr and James Kilbourne, Wildlife and Marine Resources Section, Land and Natural Resources Division, 10th & Constitution Avenue, N.W., Room 6311, Washington, D.C.

20530, Phone 633-1811. Time of Representation: 1986.

I participated in drafting a brief for the United States in this landmark test of the habitat protection plan provided for in Section 10 of the Endangered Species Act. Such tripartite agreements among developers, local agencies and the federal government are crucial to the survival of endangered species colonies, especially those located in urban areas.

6. National Wildlife Federation v. Gorsuch, 744 F.2d 963 (3rd Cir. 1984). Judges: Weis, Becker and Oliver. Opposing Counsel: Thomas Bick, National Wildlife Federation (Now with the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th & Constitution Avenue, N.W., Room 1254, Washington, D.C. 20530, Phone 633-5258). Co-counsel: Julie Weisman, U.S. Department of Justice (Now with Kirkland and Ellis, Suite 1200, 655 15th Street, N.W., Washington, D.C. 20005, Phone 879-5942). Time of Representation: 1983-1984.

I briefed and argued this case to the Third Circuit. The decision establishing the principle that a party could not sleep on its rights while a significant case was litigated and resolved then file a new action collaterally attacking the consent decree.

7. Santa Fe International Corporation v. Watt, 580 F.Supp. 27 (D.Del. 1984) and 591 F.Supp. 929 (D.Del. 1984). Judge: Schwartz. Opposing Counsel: William T. Coleman, O'Melveny & Myers, 555 13th Street, N.W., Washington, D.C. 20004, Phone 383-5300. Co-counsel: Lawrence W. Puckett, Land and Natural Resources Division, 10th & Constitution Avenue, N.W., Room 1264, Washington, D.C. 20530, Phone 633-3194 Time of Representation: 1983-1984.

I briefed and argued this case, testing the authority of the United States to deny mineral leasing privileges to other nations which deny to our citizens reciprocal rights.

8. Nollan v. California Coastal Commission, 107 S.Ct. 3141 (1986). Counsel for Appellant: Robert K. Best, Pacific

Legal Foundation, 555 Capitol Mall, Sacramento, CA 95814, Phone (916) 444-0154. Counsel for Appellee: Andrea Sheridan Ordin, 800 Tishman Building, 3580 Wilshire Boulevard, Los Angeles, CA 90010, Phone (213) 736-2304. Co-counsel for the United States as amicus: Charles Fried, Solicitor General, and Raymond B. Ludwiszewski, 10th & Constitution Avenue, N.W., Room 5143, Washington, D.C. 20530, Phone 633-2201. F. Henry Habicht, U.S. Department of Justice (now with Perkins Coie, Suite 1200, 1110 Vermont Avenue, N.W., Washington, D.C. 20005, Phone 887-9030). Time of Representation: 1986.

I helped draft the amicus brief of the United States in this case, which established the principle that a regulatory action can constitute a taking of private property, requiring compensation.

9. State of Texas v. Secretary of Interior, 580 F. Supp. 1197 (E.D. Tex. 1984). Judge: Parker. Opposing Counsel: Hubert Oxford, Benchenstein, Oxford, Radford and Johnson, Allied Bank Building, P.O. Box 150, Beaumont, TX 77704, Phone (409) 833-9182. Co-counsel: Margaret Strand, Land and Natural Resources Division, 10th & Constitution Avenue, N.W., Room 7112, Washington, D.C. 20530, Phone 633-2219 (I was not counsel of record). State of Louisiana, ex rel., William J. Guste, Jr. v. Watt, 631 F. Supp. 648 (E.D.La. 1985). Judge: Mentz. Opposing Counsel: Gary L. Keyser, Assistant Attorney General, State of Louisiana, 2-3-4 Loyola Building, New Orleans, Louisiana 70112, Phone (504) 568-5575. Co-counsel: Charles W. Findley, Land and Natural Resources Division, 10th & Constitution Avenue, N.W., Room 2623, Washington, D.C. 20530, Phone 633-5315. (I was not counsel of record.) Time of Representation: 1985-1986.

I supervised the litigation, settlement negotiations and legislative efforts in these cases, seeking to establish the appropriate formula for dividing billions of dollars of royalty revenues from off-shore oil and gas leases. The matter was successfully resolved by legislation in 1986.

10. Sportique Fashions v. Sullivan, 597 F.2d 644 (9th Cir. 1979). Judges: Trask, Hug, and Dick Yin Wong. Opposing Counsel: William T. McGivern, Jr., United States Attorney's Office, 450 Golden Gate Avenue, San Francisco, CA 94109, Phone (415) 556-1126. Co-counsel: None. Time of Representation: 1975-1979.

I tried this case in the District Court and the Ninth Circuit Court of Appeals, on the issue of whether a postmaster is liable for negligent failure to deliver mail.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I have helped to formulate and implement the United States' policy of strictly enforcing the moritorium on commercial whaling adopted by the International Whaling Commission (IWC). Together with other Departments of government, I have helped to negotiate agreements with the governments of Japan and Iceland which will ensure their compliance with the IWC's efforts to restore global whale populations.

I have supervised the efforts of the Lands Division to negotiate a consent decree with Shell Oil Corporation providing for the clean-up of the Rocky Mountain arsenal site near Denver, Colorado. This consent decree provides that the Army and Shell will split the cost of clean-up, which is estimated to run $750 million dollars to one billion dollars. The consent decree represents a major step forward in cleaning up government-owned hazardous waste facilities across the nation.

I helped form the National Environmental Enforcement Council, a group of federal, state and local environmental officials and prosecutors dedicated to coordinating and enhancing a coherent program of environmental enforcement across the country. This organization has served as the principal forum for resolving federal/state problems in connection with environmental regulation and enforcement, sharing resources and coordinating enforcement strategies, and educating state and federal prosecutors who are newcomers to the environmental enforcement process.

I supervised a number of major initiatives to protect endangered species, including Operation Falcon and Operation Trophykill. Operation Falcon was a three year undercover investigation into the international smuggling of falcons and other endangered birds of prey. Operation Falcon smashed a major falcon smuggling ring, resulting in 68 convictions as well as a large fine and public admission of responsibility by a high ranking Saudi Prince who was beyond the criminal jurisdiction of the U.S.

Operation Trophykill was a three year undercover investigation of illegal big game hunting of endangered species such as mountain lions, mountain goats, big horned sheep and elk, which resulted in 50 convictions of hunters and guides across the United States.

I supervised the investigation and prosecution of a major shipbuilder in Rhode Island who, along with his corporation, pleaded guilty to 28 counts of violations of the environmental criminal laws. The prosecution resulted in fines of $675,000.

I supervised the formation of the Environmental Crimes Section within the Land and Natural Resources Division. This Section, created in 1987, is charged with prosecuting nationally the violation of the environmental criminal laws. The Section now contains 20 lawyers.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I have recused myself from participation in any item of litigation with which I had any involvement prior to commencing government service. I have also recused myself from participation in any cases involving my wife's law firm or the clients that she represents. I also recuse myself on an ad hoc basis from cases which might give rise to an appearance of impropriety.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   None.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   Please see my Financial Disclosure Report, attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   Please see the Net Worth Statement, attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   None.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

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Financial Disclosure Report

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Reporting Status (Check Appropriate Box)			Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)
☒ Incumbent	☐ New Entrant, Nominee, or Candidate	☐ Termination Filer			1/5/83
Reporting Individual's Name	Last Name MARZULLA		First Name and Middle Initial ROGER J.		
Position for Which Filing	Title of Position DEPUTY ASST. ATTORNEY GENERAL		Department or Agency (If Applicable) DEPT		
Location of Present Office	Address (Number, Street, City, State and ZIP Code) 10TH & CONSTITUTION AVE., N.W. WASHINGTON, D.C. 20530		Telephone No. (Include Area Code) (202) 633-2744		
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held NONE N/A				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination NONE N/A		Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☐ No		
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual		Date (Month, Day, Year) 4/17/87		
Other Review (If desired by agency)	Signature of Other Reviewer		Date (Month, Day, Year)		
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official		Date (Month, Day, Year)		
Office of Government Ethics Use Only	Signature		Date (Month, Day, Year)		

Termination Date (If Applicable) (Month, Day, Year)
N/A

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

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Reporting Individual's Name MARZULLA, ROGER J.	Assets and Income	Page Number 2	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal business and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Sch. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Example	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											partnership income									$56,000			
1	CONDOMINIUM 300 PEARL ST, #206, [illegible]						X			X										X							X
2	SPOUSE'S INCOME FROM DEPT. OF JUSTICE														SALARY						X						X
3	IRA - DEPT. JUSTICE CREDIT UNION		X								X						X										X
4																											
5																											
6																											
7																											
8																											
9																											
10																											

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Reporting Individual's Name
MARZULLA, ROGER J.

Page Number	3	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☒

S or DC		Identification of Assets	Type of Transaction (X)				Amount of Transaction (X)					
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $250,000	Over $250,000
	Example	X Y Z Common	X			2/1/83			X			
1												
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only: Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☐

S		Source (Name and Address)	Brief Description	Value
	Example	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
	Example	Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1		PRACTICING LAW INSTITUTE, NY & TX	TRAVEL/LODGING REIMBURSMENT	$400
2				
3				
4				
5				
6				

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Reporting Individual's Name MARZULLA, ROGER J.	Page Number	4	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

S or DC		[illegible] Name and Address	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	Example	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
	Example	John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1		EMPIRE SAVINGS, DENVER, CO	30 YR MORTGAGE ON RENTAL PROP	4/81	13.5				X		
2		STEVE RUNYARD, GREEN MOUNTAIN FALLS, CO	5 YR " " " "	4/81	12.5			X			
3											
4											
5											
6											

(Category of Amount or Value (X) spans the last five columns.)

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/75 (partnership agrmt)

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Reporting Individual's Name
MARULLA, ROGER J.

Page Number	5	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☒

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

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FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	7500		
U.S. Government securities—add schedule	0		
Listed securities—add schedule	0		
Unlisted securities—add schedule	0		
Accounts and notes receivable:			
Due from relatives and friends	0		
Due from others	0		
Doubtful	0		
Real estate owned—add schedule	340,000		
Real estate mortgages receivable	0		
Autos and other personal property	50,000		
Cash value—life insurance	0		
Other assets—itemize:			
IRA	7,500		
Thrift Plans	10,000		
Total assets	407,500		

LIABILITIES			
Notes payable to banks—secured	0		
Notes payable to banks—unsecured	0		
Notes payable to relatives	0		
Notes payable to others	0		
Accounts and bills due	3,000		
Unpaid income tax	0		
Other unpaid tax and interest	0		
Real estate mortgages payable—add schedule	272,000		
Chattel mortgages and other liens payable	0		
Other debts—itemize:	0		
Total liabilities	275,000		
Net worth	132,500		
Total liabilities and net worth	407,500		

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	0		
On leases or contracts	0		
Legal Claims	0		
Provision for Federal Income Tax	0		
Other special debt	0		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	0		
Are you defendant in any suits or legal actions?	0		
Have you ever taken bankruptcy?	0		

While in private practice, I accepted referrals from the County Bar Association of persons who did not qualify for Legal Aid but were financially disadvantaged, representing them at little or no fee. I also served as a volunteer arbitrator in a neighborhood small claims program which conducted informal hearings at night in neighborhoods in an attempt to resolve small claims matters.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I belonged to Denver Rotary Club during part of 1982.

AFFIDAVIT

I, ROGER JOSEPH MARZULLA, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 10, 1988
(DATE)

Roger Joseph Marzulla
(NAME)

District of Columbia
My Commission Expires August 14, [illegible]
10 February 1988

Carol L. Miles
(NOTARY)

CONFIRMATION HEARING ON: DAVID M. EBEL, LOWELL A. REED, KIMBA M. WOOD, AND JACK T. CAMP, JR.

THURSDAY, MARCH 24, 1988

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 2:00 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy (acting chairman) presiding.

Also present: Senators Thurmond and Specter.

Staff present: Steven J. Metalitz, chief nominations counsel; Ronald Legrand, chief investigator; Andrew Rainer, investigative counsel; Robert Short, minority chief investigator; and Frank Klonoski, minority investigator.

Senator Leahy. This afternoon the Judiciary Committee will hold its 23rd hearing. I want to make sure Senator Thurmond hears this. This afternoon we will hold the 23rd hearing we have held in this Congress to consider nominations to the lower Federal courts.

I do not know if there is anybody here from the Department of Justice, but I want to note it is the 23rd, and we will take the testimony on four judicial nominations. David Ebel of Colorado has been nominated to be U.S. Circuit Judge for the Tenth Circuit.

Three other nominations are for the district courts; Lowell Reed for the Eastern District of Pennsylvania, Kimba Wood for the Southern District of New York, and Jack Camp for the Northern District of Georgia.

As we customarily do, I will hear first from Senators who wish to introduce nominees to the committee.

Before we begin these introductions, let me note for the record that all four nominees before the committee this afternoon have completed extensive questionnaires on their qualifications, experience and financial situations.

The publicly available portions of these questionnaire responses will be printed in the record of this hearing, so as not to take more time. We will also keep the record open for a limited time for follow-up questions to the nominees and for additional committee members who are unable to be present this afternoon.

We will also include in the record the complete introductory statements of any Senators, including any who were unable to attend personally because of scheduling conflicts.

Mr. Ebel is joined here by the distinguished Senators from Colorado, Senator Armstrong and Senator Wirth.

Senator Thurmond, did you wish to make an opening statement?

Senator **Thurmond**. I have no statement. We are glad to have all of you here and we will try to get you confirmed as quickly as he will agree.

Senator **Leahy**. I'm only one senator, Senator Thurmond. We have been trying to rush things through as quickly as we can but as you know, we have had an awful lot of letters coming from members of the Judiciary Committee that take an enormous amount of time to respond to.

I yield first to Senator Armstrong, and then to Senator Wirth.

STATEMENT OF HON. WILLIAM L. ARMSTRONG, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator **Armstrong**. Thank you, Mr. Chairman. I am grateful for your courtesy.

I would like to present to the committee a statement which in a formal sense would introduce and make a record about my friend, David Ebel, and just ask that it be incorporated into the record of this proceeding.

Senator **Leahy**. Without objection.

Senator **Armstrong**. If I could just take a moment to elaborate on that statement to tell you that David Ebel is not only an extraordinarily well regarded attorney in our State, he is a good citizen and he has been a friend of mine for about 20 years. I know him very well and think the world of him.

I guess I have not stopped to think how many lawyers in our State I personally know, it must be hundreds. But I do not know of a single lawyer in our State who I could recommend as highly for this position as I do David Ebel.

Even so, even after knowing him for a long time and having great faith and confidence in him, when the possibility that he might be appointed by the President to this vacancy came up, I made it my business to seek the opinion of others in the community whose judgment I respect, both lawyers and other people who know him from a variety of different perspectives, and he came back uniquely in my experience.

I have spent a disproportionate amount of my life the last few years checking the credentials of judges and potential judges. David Ebel is the only one that I can think of who came back absolutely one hundred percent. I do not think in the several dozen contacts that we had in checking his credentials there was one negative comment came back.

It is the general impression I think of the organized bar and of the general public and the people who know Mr. Ebel that he is a brilliant choice for the bench and I commend him to the committee and appreciate the opportunity to say so.

Senator **Leahy**. Thank you very much, Senator Armstrong. I appreciate that very much Certainly a strong unqualified endorsement like that will carry a lot of weight with the committee.

Senator Wirth, my good friend from Colorado, we are delighted to have you here too, and please proceed.

STATEMENT OF HON. TIMOTHY E. WIRTH, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator WIRTH. Thank you very much, Mr. Chairman.

I wanted to associate myself with the comments made by the senior Senator from Colorado, Senator Armstrong.

I have a statement which I would like, if I might, to have included in full in the record.

Senator LEAHY. Without objection.

[Prepared statement follows:]

STATEMENT OF SENATOR TIMOTHY E. WIRTH

Mr. Chairman, I am especially pleased to be here today to welcome David Ebel from Denver, Colorado who has been nominated to the 10th Circuit Court of Appeals.

Mr. Ebel brings to the appellate court a solid legal background that has spanned more than 23 years, and has included broad experience in such diverse areas of the law as product liability, taxation, criminal law, mergers and acquisitions, antitrust, employment and discrimination, corporate and securities law, personal injury, mining and natural resources, commercial contracts and municipal law.

For the past 18 years, he has been a partner in the Denver-based law firm of Davis, Graham & Stubbs, is now an adjunct professor of Law at the University of Denver Law School, and maintains an active membership in the American Bar Association, the Colorado Bar Association, the American College of Trial Lawyers and the Colorado Judicial Institute.

The American Bar Association has found Mr. Ebel to be well-qualified to serve on the 10th Circuit bench, a minority of the ABA panel pronounced him exceptionally well-qualified, and my own bipartisan Judicial Nomination Review Committee, comprised of fourteen Colorado attorneys, unanimously recommended Mr. Ebel for elevation to the Court of Appeals.

Senator Armstrong and I are particularly pleased to see Mr. Ebel before this committee today. Since December of 1984, Colorado has not been fully represented on the 10th Circuit and we look forward to a speedy resolution of that situation.

I commend you, Mr. Chairman, the other members of the Committee and the staff for holding this hearing and for having moved so expeditiously to consider Mr. Ebel's nomination.

Senator WIRTH. Just a couple of quick comments, Mr. Chairman, to supplement my statement and the very accurate words of Senator Armstrong.

One, walking down the corridor from the elevator Senator Thurmond and I were talking about what should be the qualifications for a judge. We thought that they should be, in effect, two-fold; first, someone who is very able and second, someone who is going to be fair.

We have before us today the nomination of David Ebel for the Tenth Circuit Court of Appeals, an individual who is unquestionably remarkably able and who will also be very fair indeed.

Second, I would point out, Mr. Chairman, that I am not a lawyer but I have advising me in these matters a panel of 14 attorneys in the State of Colorado—a very distinguished group of Republicans and Democrats, former deans of law schools and present judges—a very, very distinguished group of attorneys. And, getting 14 attorneys in a room is, I am sure you know, a contentious experience. This is one of the few times that I think that that group has come to a unanimous conclusion.

Senator LEAHY. If it is as bad as going to Bar Association meetings, let me tell you that I do not envy you at all.

Senator WIRTH. I am glad that I do not have to go to those, Mr. Chairman.

But I am pleased to report to the committee that I have interviewed David, examined his record, called judges and a variety of other individuals in the legal community in Colorado and they came back unanimous in support of David Ebel.

So I am pleased to be here as well to further forward his nomination. I hope that the committee will act expeditiously and that we will act expeditiously on the floor of the Senate and that David will join, as we must fill out that court, the Tenth Circuit Court of Appeals for the Judicial District of Colorado.

Thank you, Mr. Chairman.

Senator LEAHY. Thank you very much.

Mr. Ebel, do you have any members of your family here?

Mr. EBEL. I do not, Mr. Chairman. I regret that when I heard about the date today my family had an unavoidable commitment. But if I could make just one statement—well, I will make it when I start.

Senator LEAHY. Thank you. I was just going to say, if they were here we would introduce them at this point. Well, I thank you very much. I know that both Senators have to leave.

Mr. Ebel, if you could just step down for a moment.

Senator THURMOND. I want to congratulate the nominee upon having both Senators here for him in person. A lot of times Senators are so busy they do not get here. You got one Republican and one Democrat. You should have no trouble getting through in short order.

Senator LEAHY. You are here with both well-respected senators and I concur with what my senior colleague said.

Thank you.

I wonder if Mr. Lowell Reed could step forward. I know Senator Heinz is here with him and, of course, Senator Specter is a member of this committee and I understand both Senator Heinz and Senator Specter wish to speak.

Mr. Reed, it is good to have you here, sir.

Senator Heinz.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE COMMONWEALTH OF PENNSYLVANIA

Senator HEINZ. Mr. Chairman, thank you.

I imagine that Senator Specter will have a good deal to say about Lowell Reed because they have been neighbors in the City of Philadelphia and that area for quite sometime, although Lowell himself is not from Philadelphia. He is a resident of Montgomery County. It has been known for people in Montgomery County and Philadelphia to get along quite well, except in election years.

I do have the privilege of introducing Lowell Reed as the President's nominee for the U.S. District Court for the Eastern District of Pennsylvania.

And it is a pleasure to introduce somebody who has as much experience, has conducted himself so well and who I think will make as fine a judge as Lowell Reed.

He has some 30 years of experience, beginning with service, nonlegal service, of course, as an intelligence officer in the U.S. Naval Reserve. He was on active duty with the Reserve for 5 years. He is a distinguished legal scholar. He has written extensively on medical-legal matters, particularly those issues involving worker's compensation. In my prepared statement, which I ask be a full part of the record, there are some particular works that I refer to that are quite scholarly and extremely well thought of.

He has, I might add, co-authored five revisions of the Workers' Compensation Manual in Pennsylvania. He has had, as part of his career, distinguished service in the courtroom as a trial lawyer. He was employed back beginning in 1980 as special counsel to the Pennsylvania State Senate Labor and Industry Committee. He served for 7 years as a member of the Committee for Referees, Rules and Procedures under the Pennsylvania Secretary of Labor and Industry.

He had to go out of State for a part of his education. He went to the University of Wisconsin. He came back and received his law degree from Temple University. That, of course, has provided Senator Specter and I with a lot of ammunition, because just as we believe the Temple Owls are going to be number one at the conclusion of the NCAA basketball tournament——

Senator LEAHY. Thank God for a Judiciary Committee hearing, Senator Heinz, so we could get that matter in there.

Senator HEINZ. There would have been some other opportunity if it had not been yours, Mr. Chairman. [Laughter.]

Senator LEAHY. I expect that by slipping it into the chaplain's prayer some morning at the opening of the session.

Senator HEINZ. That, too, can be arranged.

But just as we expect the Temple Owls to be the winners ~~in~~ this great NCAA tournament, so Senator Specter and I are convinced that this committee and the American people and our residents in the Eastern District of Pennsylvania will be winners when Lowell Reed is confirmed and sworn, as we hope he will be, as a judge for the Eastern District of Pennsylvania.

Thank you, Mr. Chairman.

Senator LEAHY. Senator Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE COMMONWEALTH OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

I am delighted to join Senator Heinz in welcoming my colleague, Lowell Reed, a fellow practitioner at the Philadelphia Bar for some 30 years. He comes to this nomination preeminently well qualified. He had been nominated for the Commonwealth Court in Pennsylvania, an appellate court, but because of the political problems in Pennsylvania, was not confirmed there. However, I do believe that the U.S. Senate will be a great deal more objective.

He has an outstanding academic record. He has an outstanding background in professorial ranks, being a lecturer at Temple Law School. He has served as special counsel, has done extensive work in drafting legislation, and has been an expert witness. He also has performed in many capacities as a distinguished practitioner.

Most fundamentally, I have known him for the past 30 years. We came to the bar at approximately the same time. To share another similarity and experience, although Lowell was born in Westchester, Pennsylvania, he grew up in Wisconsin as a midwesterner, as was I, until each of us married Pennsylvania beauties and for the past many years we have been Pennsylvania lawyers. And, this man is really an extraordinary lawyer.

Senator LEAHY. That is different than a Philadelphia lawyer.

Senator SPECTER. Well, those terms are interchangeable, Mr. Chairman.

Senator LEAHY. I see. I never fully understood. I just come from a small town, myself. [Laughter.]

Senator SPECTER. Well, so do I, Mr. Chairman, and also from a big city. My home is Russell, Kansas. My home is Philadelphia, Pennsylvania. It is good to be from a small town and a big city and a good lawyer is a good lawyer any place.

This man has been at the bar a long time. It is a tough job to be a judge of the Federal court. The substantive and procedural rules are very complicated. He is a person who can walk right on to that bench, don his robe and perform really outstanding service from the word go.

Senator Heinz and I have tried to provide those kind of people for the Federal bench in Pennsylvania from our nominating panel. Most of our nominees have had prior judicial experience from the state courts. Judge-to-be Reed has not but he is still well qualified to take on that responsibility so I am very glad to be here and if he can respond appropriately to the tough questions I will ask him in my capacity as a Judiciary Committee member, I will support him.

Thank you.

Senator LEAHY. Senator Thurmond.

Senator THURMOND. Mr. Reed, I congratulate you on your selection by the President and I am very pleased that you have both of your able Senators here endorsing you. They are both right here and one of them is a member of the committee, and with his approval, we ought to get you right out.

Senator LEAHY. Mr. Reed, do you have any members of your family here?

Mr. REED. Yes, Mr. Chairman. May I introduce them?

Senator LEAHY. Certainly please. My gosh, you have got the whole two front rows here.

Mr. REED. My wife, Diane Benson Reed, from Abington, Pennsylvania; my son-in-law, Charles Marsh and his bride, Diane Susan Reed, my daughter; my son, Christopher, who just finished midterms at Bucknell University and flew into town last night; my son in the next row, Jeffrey Barton Reed; and my son Andrew Reed, who came down from the State of New York for Senator D'Amato to take a look at.

Senator LEAHY. Wonderful. We are glad to have you all here. I know this must be a proud time for all of you. Your husband, father and father-in-law are fortunate to have such a fine group here with him, and we will be back to you in just a few minutes, Mr. Reed.

I note my good friend Senator D'Amato is here with Kimba Wood. Would you both please step forward?

Ms. Wood, nice to have you here.

And Senator D'Amato, it is always good having you here. We seem to have you here an awful lot in the last few months. It is probably an indication that all Northeast States are not the same size and the one just across the lake from Vermont has an awful lot of judges.

Glad to have you here, sir.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Mr. Chairman, it is a great privilege for me to be here, number one, because you are chairing this committee; secondly, I have my dear friend Senator Thurmond who has been so gracious over the years and my dear friend, Senator Specter, the lawyer's lawyer.

Mr. Chairman, do not let the nominee's appearance deceive you.

Senator LEAHY. You may want to hurry up to finish that sentence, Senator D'Amato.

Senator D'AMATO. It is obvious that she is beautiful. It might raise the question, in terms of her youth, how is this that someone so youthful in appearance should be placed before this committee as a nominee to the prestigious court of the Southern District Federal District Court.

As I said, do not let those appearances deceive you because Kimba Wood has an extraordinary background both as a legal scholar, both in the academic community, having graduated from Connecticut College, having earned a master's degree in economics from the London School of Economics and her doctorate of law from Harvard Law.

She has been involved in the practice of law for some 19 years and she is now a partner in the prestigious firm of LeBoeuf, Lamb, where she has become known, indeed, and has mastered the most complex aspects of commercial litigation, particularly in the areas of antitrust matters. Indeed she has testified on behalf of the ABA before this committee on the matters of antitrust.

Mr. Chairman, she makes a great sacrifice financially as it relates to undertaking this position and I think it spells out, as we have been so fortunate with others, their love of the law, those very extraordinary few, a handful, who would give up most lucrative careers earning hundreds and hundreds of thousands of dollars to serve their Nation. Indeed, I think we are most fortunate to have such an extraordinary young woman as Kimba Wood, so qualified and so talented, for this position.

I hope, and I know that this committee will expeditiously review and approve this nomination and I am sure that she will be one of the outstanding Federal jurists of our time.

Senator LEAHY. Thank you very much, Senator D'Amato.

I note also for the record that Senator Moynihan, who is at another hearing, is going to submit a statement.

I also note this morning the committee received a call from Robert Abrams, the Attorney General of the State of New York, and General Abrams warmly endorses the nomination of Ms. Wood to the Federal district court. He has asked that the record will show that endorsement and of course without objection Attorney General Abrams, who is no stranger to this committee, his statement of support for Ms. Wood would be put in the record.

I would yield to my distinguished senior colleague.

Senator **Thurmond**. Ms. Wood, I want to congratulate you upon your selection by the President. Al D'Amato has gotten us so many judges I have almost lost count now. But if you want something done around here, see Al D'Amato. He is a man of action.

So I congratulate you of having him on your side. And your other distinguished Senator, Senator Moynihan, too, I understand has approved you so you have unanimous consent. The man that got you the appointment and the other one who is going to go along with it. So you are on your way.

Thank you.

Senator **Leahy**. I note that we have done more judges from New York and Pennsylvania than any other State in here. But I have to tell you, Ms. Wood, when we were trying to get as many people on the schedule as we could, Senator D'Amato came up to me and he says, Pat, now, you know, you are half Italian, and he says, I am Italian, and we Italians have got to get along.

I said, what do you want, Al? He said, in that next hearing, couldn't Kimba Wood be on there? Or do I have to call your mother, my mother being first generation Italian American. So I said, she will be on there. [Laughter.]

But I want you to know we always have very solid reasons and lofty discussions on these things.

Ms. Wood, do you have any members of your family here today?

Ms. **Wood**. I do, Mr. Chairman. My husband, Michael Kramer, is here with me.

Senator **Leahy**. We know Mr. Kramer well. We see his byline periodically.

Ms. **Wood**. We have a 2-year-old son, Benjamin, who would have loved to have been here today, but I do not think his agenda would have been the same as yours.

Senator **Leahy**. Do you think that perhaps he would not bring judicial decorum to the hearing?

Ms. **Wood**. I doubt it.

Senator **Leahy**. Well, he will read about this in later years and it will mean a lot more to him.

If I could just beg yours and Senator D'Amato's indulgence just for a moment, when I first got elected to the Senate my youngest had just barely turned four. On election night somebody asked him, do you know what is going on?

He said, yes, today daddy is going to get elected to the Senate. I was about a ten-to-one long shot, which shows the faith that children have. He says, today daddy is going to get elected to the Senate and tomorrow we move to Washington, which was fine.

When we finally did move down to Washington, we came down on the weekend and had a wonderful time here, went sightseeing and on Monday he said, okay, now when do we go home? And it was down hill from then on when he found out we were obviously going to be here quite a bit.

But thank you very much for being here. We will get back to you soon.

Senator D'**Amato**. Thank you, Mr. Chairman.

Senator **Leahy**. Thank you.

Mr. Camp, I know Senator Fowler was juggling about two other hearings and is on his way, but why don't you come forward anyway, please, because I know both Senator Fowler and Senator Nunn have been supporting your nomination.

Do you have members of your family here?

Mr. **Camp**. Yes, sir, I do, and I would be very pleased to introduce them.

Senator **Leahy**. Could you, please.

Mr. **Camp**. My wife, Elizabeth; my mother, Sophia Camp, and my son, Harry Camp.

Senator **Leahy**. We have only had two or three times when we have had nominees with a spouse, a parent and a child all together. It is extraordinary and I applaud you for it. I think it is wonderful and we will be back to you too, soon, sir.

Thank you.

Mr. **Camp**. Thank you. Senator, I have some good friends from my firm. Would it be appropriate for me to introduce them?

Senator **Leahy**. Please, of course. Would you please? I would like it noted for the record that they are here.

Mr. **Camp**. This is a senior partner in my law firm, Mr. J. Littleton Glover, and another member of the firm, Mr. Michael Sumner is here. Also, some of any oldest friends from both Washington and back home, Judge William Lee and Mr. and Mrs. Judson Starr.

Senator **Leahy**. Thank you. We welcome you all here and we are delighted to have you here with us. While I can't predict what the committee would say, I might tell you that the partners of your firm should probably be out looking for someone to fill your spot in the firm very soon, sir.

Mr. **Camp**. Thank you, Mr. Chairman.

Senator **Leahy**. Senator Fowler, I just explained that you were torn between about three different hearings this afternoon, and Mr. Camp has introduced his family and his friends from Georgia. If we had that many people coming from Vermont there would be nobody left back home. [Laughter.]

But we yield to you, sir, for your remarks.

STATEMENT OF HON. WYCHE FOWLER, JR., A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator **Fowler**. It is like the Cunard lines, half the fun is getting there, Mr. Chairman. Try it sometime.

Well, I do appreciate this courtesy of the committee and apologize to those that I am interrupting.

I did want to just take a minute and a half, though you have met Mr. Camp and his family, to tell you that we are very proud of him in Georgia. He is a distinguished graduate of the Citadel.

He followed his undergraduate education with a master's degree in history at the University of Virginia. He served our country extremely well in the armed services, including service in Vietnam where he was awarded the Bronze Star. After his discharge from the Army he returned to the University of Virginia to earn his law degree.

Since 1973, Mr. Camp has been a practicing attorney in Alabama and Georgia, and has developed a broad and varied range of legal experience. In addition to his work with criminal law and general trial practice, he has had considerable experience in commercial litigation, bankruptcy law. Also, since 1975 he has been a member of the State bar of Georgia with service to the Judicial Procedure Administrations Committee and now serves on the Board of Governors.

I know, Mr. Chairman, that you and yours will continue with your usual full and fair examination of Jack Camp's qualifications, his credentials, his character, the content of his views and subject him, as all of our nominees, to the highest standard of excellence that we all seek in filling these U.S. district court judgeships.

But my last remark is simply that I am confident that Jack Camp will meet those high standards of excellence and I urge his nomination.

Thank you.

Senator **Leahy**. Thank you very much. I appreciate your coming over.

As I mentioned earlier before you came in here, I know that you are juggling several different hearings today and in fact one of them I stopped by briefly myself this morning. But certainly, with the respect I have as chairman for you and we all do, it certainly helps your nominee's chances being here and I appreciate you being here.

Senator **Fowler**. I thank you and my distinguished friend from South Carolina.

Senator **Leahy**. Senator I should also say for the record that Senator Nunn also has a statement in support of this nominee.

[The prepared statement follows:]

INTRODUCTORY REMARKS BY SENATOR SAM NUNN ON THE CONFIRMATION HEARINGS OF JACK TARPLEY CAMP, JR.

Mr. Chairman, your committee is today considering President Reagan's nomination of Jack Camp of Newnan, Georgia to the federal district court bench. If confirmed by the Senate, Jack will fill a seat on the Northern District of Georgia Circuit. Mr. Chairman, and other members of the Committee, I commend Jack Camp to you. I have met him in recent months and was favorably impressed with him, his professionalism and his demeanor. Jack comes very highly recommended from a number of Georgians who have worked closely with him on business, civic, and personal matters. I believe that he will do a fine job in this important position of service to the people of Georgia and to the nation as a whole.

A Newnan, Georgia native, Jack has been a partner in the Newnan firm of Glover & Davis since 1975, primarily handling the firm's banking, bankruptcy, and commercial law practice. A 1973 graduate of the University of Virginia's School of Law, Jack also holds a Masters Degree in history from Virginia. He was graduated with honors from The Citadel in 1965 with a Bachelor of Arts degree in history. Not only does Jack have a strong academic background, he also has a proven track record of professional experience in his position with his firm. In addition, Jack has found time to become significantly involved in his community through various civic and church activities. In my view, Jack Camp has shown that he is a well-qualified and well-rounded individual. I would respectfully request that the Committee report his nomination favorably.

Sam Nunn

March 24, 1988

Senator **Thurmond**. Yes. Mr. Camp, I would have to be for you for two reasons. One is you graduated at the Citadel, the best military college in the United States.

The next is you are endorsed by two of the finest men in the Senate. Senator Nunn has been here for a number of years. He is Chairman of the Armed Services Committee and is held in high esteem. And Senator Fowler has been here now in his first term. He is a man of character and ability and dedication and they are both fine men and they both highly endorse you, and that is enough for me.

Senator **Fowler**. Thank you, Senator Thurmond, very, very much.

Thank you for those kind words, Senator Leahy.

Senator **Leahy**. Thank you very much.

Could I call Mr. Ebel back?

Mr. Ebel, would you please stand and raise your right hand? Do you solemnly swear that the testimony you should give before this committee should be the truth, the whole truth and nothing but the truth so help you God?

Mr. **Ebel**. I do.

Senator **Leahy**. Mr. Ebel, did you have any opening statement you wish to make?

TESTIMONY OF DAVID M. EBEL, LITTLETON, CO, TO BE U.S. CIRCUIT JUDGE FOR THE 10TH CIRCUIT

Mr. **Ebel**. Just briefly, Mr. Chairman.

I do have with me today one of my long time old friends and law partner, Dick Holme, and if I could ask him to stand and be recognized.

Senator **Leahy**. Of course, and we would like to note for the record that he is here.

Welcome, sir.

Mr. **Ebel**. Finally, Your Honor, although my family is not able to be here, they are here in spirit with me and I would like to express for the record my deep gratitude and appreciation to my wife, Gayle, and to my children, Beth and Mark and Ted and Kate for their encouragement and support during this time with me.

Senator **Leahy**. Thank you, sir, and thank you for mentioning that. I am sure that your wife and four children are very proud of you being here.

I was wondering, you conducted an active litigation practice in your law firm for about 20 years. I must say that weighs heavily in my thinking. The most enjoyable time of my life was a little over a decade that I spent as an active trial lawyer and I am glad to see judges come with real experience, who have really been in trials.

But you switched to corporate and business practice in 1985. Was there a particular reason? I am just curious more than anything else why you moved away from litigation.

Mr. **Ebel**. Well, I think probably there were two motivating reasons. The first was that after 20 years I wanted to try something new and different and of a different nature and challenge. The second reason probably is that I was looking for some more sustained client relationships that did not disappear as soon as the case was over and I was looking for a counselor's role with clients where I could develop a longtime relationship with them.

I must say that 20 years is a long time in an area and you do not shed that skin easily and I find myself drawn back to litigation and am probably at least 50 percent occupied in litigation again today.

Senator **Leahy**. You enjoy the litigation?

Mr. **Ebel**. I do enjoy it, yes.

Senator **Leahy**. And you do not have any qualms of going on to the bench, which, of course, would now put you in some sense, you might say as the arbitrator rather than litigator. Does that create any problems in your mind?

Mr. **Ebel**. Not at all, Mr. Chairman.

Senator **Leahy**. You spent a year clerking for Justice Byron White. I have always thought that in a Supreme Court clerkship you have the chance not only to observe the ultimate in our judiciary but also deal with some of the finest minds, and I am referring to the clerks who are there. The justices have gone out of their way to pick the very brightest and the best.

Did you get a sense of what an appellate judge should be? And what do you think an appellate judge should be?

Mr. **Ebel**. Well, I did get a sense of it and I think I had a wonderful instructor in Justice White. I think that what an appellate judge should be is someone who is scrupulously fair and impartial, who will not prejudge a case and will not attempt to bring his own values to the decision process, but rather will try to follow the law and the Constitution; somebody who is willing to follow his research to the conclusions that are fairly reached from that process.

Senator **Leahy**. When you were a litigator you had a reputation, deserved or otherwise, as being, as some said, most tenacious. Others said you were tough as hell.

When you took an adversarial role you went in it strong, full and hard. As a judge, you do not have an adversarial role.

What is your attitude about what the temperament of a judge should be?

Mr. **Ebel**. I think a judge should be dispassionate and absolutely neutral and I will try to bring the same zeal to that goal as I brought to the goal of representing my clients when that was my primary charge.

Senator **Leahy**. The reason I ask this, and I am sort of intruding on a point that Senator Thurmond has brought up in the 14 years that I have been here, I have heard him say over and over again, and it cannot be said enough, that a judge has such enormous power in the courtroom, power over not only the direction of the case, questions of law, power to give to people who have never been in a courtroom before, the litigants, a chance to see what the whole justice system of our country is, what we have developed after 200 years in what I think is a very enlightened justice system.

He also has the power to totally humiliate other judges, other litigants, the individuals themselves, and I would just urge all—and I do not mean to just pick you out, I have said this to person after person coming here and Senator Thurmond has—that maybe one of the most difficult things for any judge is always to remember that one point. For the people who come into the court for that one and only time, you are the judicial system of the whole country. They will probably never see it again.

The lawyers who come in there, of course, see it every day, but even they should not become blase to the whole thing, and I think litigants, lawyers who are in adversarial roles, that is fine, be tough and go after them. But the judge has got to be most evenhanded.

I do not think you have any problem with that, do you, Mr. Ebel?

Mr. **Ebel**. I do not at all, Mr. Chairman. I think that everyone is entitled to absolute dignity and respect and I must say that I have, particularly during this process, been treated with a great deal of generosity and kindness by ever so many people and I certainly owe that to everyone that would come before me.

Senator **Leahy**. Senator Thurmond?

Senator **Thurmond**. Thank you.

Mr. Ebel, I just have two questions. What do you interpret from the term due process? Just what does it mean to you?

Mr. **Ebel**. I think that due process means that the people are entitled to a fair process and fair treatment under the law with predictable procedures that are designed to get to the truth.

Senator **Thurmond**. Mr. Ebel, what is the proper application of stare decisis in constitutional law? Specifically, what does it do to a Federal judge when confronted with a case in which one of the precedents of his court clearly conflicts with the Constitution as that judge interprets it?

Mr. **Ebel**. Well, Senator, I think that stare decisis is a critical part of our jurisprudence because it is what guarantees us a rule of law rather than rule of men, and I think that it is essential that you follow stare decisis.

If I felt that a case had come before me that was clearly controlled by controlling precedent, and if that precedent came from the U.S. Supreme Court, I would, of course, be bound to follow that precedent, but would write an opinion that would urge the Court to reconsider its views.

If the controlling precedent were from my own court in tenth circuit, I would request an en banc decision or a consideration by that court. But, of course, if they affirm their view or declined an en banc decision, I would be bound by the precedent.

Senator **Thurmond**. I think there are two qualities a judge ought to possess; one is, he has got to be fearless. The next is he has got to be fair. If he possesses those two qualities I think he will make a good judge.

I do not think I have any other questions. I hope you enjoy your service on the bench.

Mr. **Ebel**. Thank you, Senator, very much.

Thank you, Mr. Chairman.

Senator **Leahy**. Thank you.

Senator Specter.

Senator **Specter**. Mr. Ebel, in private practice were you a litigator?

Mr. **Ebel**. Yes, sir.

Senator **Specter**. Did you try a lot of cases?

Mr. **Ebel**. Yes, sir.

Senator **Specter**. A lot of jury trials?

Mr. **Ebel**. Yes, sir.

Senator **Specter**. What kinds of cases?

Mr. **Ebel**. Commercial litigation, for the most part, breach of contract, antitrust, securities, those kinds of cases were the most typical.

Senator **Specter**. Did you argue many matters on appeal?

Mr. **Ebel**. A fair number.

Senator **Specter**. Were you ever in the Supreme Court?

Mr. **Ebel**. Yes, sir.

Senator **Specter**. How often?

Mr. **Ebel**. One time. I was appointed by the Supreme Court to represent an indigent party whose petition for certiorari had been granted and the Supreme Court then asked me to represent him as the court-appointed counsel. I argued that case and got that case reversed on an 8 to 1 vote.

Senator **Specter**. How long did you live in Kansas?

Mr. **Ebel**. I have lived in Kansas 18 or 19 years, in Topeka. I am sure that I have worked in—did you say Goodland?

Senator **Specter**. Well, you were born in Wichita, I see on your résumé.

Mr. **Ebel**. Yes.

Senator **Specter**. As I was. I lived there for 18 or 19 years myself, in Russell.

How did you happen to go to Denver?

Mr. **Ebel**. Well, after I finished clerking for Justice White we were looking out west and he himself had come from Colorado and had spoke glowingly of the fishing and I found that very attractive.

Senator **Specter**. So you went to Colorado after you clerked for Justice White?

Mr. **Ebel**. That is correct.

Senator **Specter**. You had been a Kansan before you went to college and law school?

Mr. **Ebel**. Yes, and I probably would have returned to Kansas except I introduced my bride to the State in a day in July, which probably was not prudent, and she decided that she wanted a cooler climate.

Senator **Leahy**. Like going to Vermont in January.

Senator **Specter**. I did the same thing once and she scarcely will go back at all.

Well, good luck to you.

Mr. **Ebel**. Thank you, Senator.

Senator **Leahy**. Thank you very much. I have no further questions.

If there are other questions, the record will stay open for a couple of days.

Thank you very much, Mr. Ebel.

Mr. **Ebel**. Thank you, Mr. Chairman.

Senator **Leahy**. Mr. Reed, would you come forward, please?

Mr. Reed, would you please stand and raise your right hand?

Do you solemnly swear that the testimony you should give in this matter should be the truth, the whole truth and nothing but the truth so help you God?

Mr. **Reed**. I do so swear.

Senator LEAHY. Mr. Reed, did you have a statement that you wished to make for the record?

TESTIMONY OF LOWELL A. REED, JR., ABINGTON, PA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Mr. REED. A very brief one. Mr. Chairman, I am deeply honored to have been nominated by the President of the United States and indeed honored to appear before this distinguished committee. I am eager and excited about going on the bench if I should be confirmed by this body, and I am pleased to answer your questions, sir.

Senator LEAHY. Thank you, Mr. Reed.

Mr. Reed, you have a great deal of experience in a wide variety of tort cases. You have gone from malpractice and product liability, workman's comp, so on. You have been predominantly, if not virtually exclusively, a defense lawyer in those cases. And this is in some way related to the question I just asked Mr. Ebel before.

When you go from being an adversary on one side or litigant on one side to an—there must be a better word than arbitrator—but one who has got to keep it fair for both sides, do you have any feeling in your own mind that you would have any difficulty in that?

I mean, now you are going to have to be there making sure the plaintiff is adequately and properly and fairly heard and the defendant is adequately and properly and fairly heard. Having spent most of your time on one side of the issue, do you think you are going to have any difficulty as a judge?

Mr. REED. Mr. Chairman, I do not expect to have any difficulty at all. I accept your analysis that this is a time of transition. I leave my old clients behind and my new clients become the people and the litigants and my interests then are neutral and given over to the doing of justice.

Senator LEAHY. I might say, sir, in reading the background reports on you, that a number of people who know you best in the bar feel that you will be able to make that transition.

And if I gave you any advice at all on that, when you have an issue it never hurts when a matter is before the bench to just step back for a minute and say, I just want to think about this for a minute, and just ask yourself, are you balancing it well there?

You have also been almost exclusively in civil cases. Now, the court you are going to has an extensive criminal docket and you have not been involved much in criminal matters, certainly not recently.

What will you do to bring yourself up to speed in criminal matters?

Mr. REED. Mr. Chairman, I am well aware of that situation. I take it as a challenge. I have begun that process with the hope that I will be confirmed by this body by already checking on the schedule for judicial education by the Federal Judicial Center in Washington.

I have already arranged for indoctrination by the Chief Judge's Program, that is fairly formal in Philadelphia for the criminal side of the court. And I have secured the Judge's Desk Books on Criminal Law and I am enthusiastically awaiting the chance to get into that area.

I do not feel it is a major problem. The procedure will come quickly and the substantive law analysis is essentially the same type of analysis that one would make in any legal area. I am eager to do it and do not see a problem.

Senator **Leahy**. I am glad to hear that because I think it is extremely important. If there is one area that I can virtually guarantee that there will be appeals should the Government win, it is in the area of criminal law.

Senator Thurmond, do you have any questions?

Senator **Thurmond**. I just have a couple of questions.

Mr. Reed, in his famous dissent in *Plessy* v. *Ferguson* in 1893, Justice John Harlan referred to our Constitution as a color blind Constitution. Would you agree with this characterization?

Mr. **Reed**. Yes, Senator Thurmond, I certainly do.

Senator **Thurmond**. Mr. Reed, are there ever any circumstances under which a judge should attempt to establish new judicial precedents and if so, what criteria would you consider in order to determine the propriety of reversing the existing precedent?

Mr. **Reed**. Senator Thurmond, that is a difficult question but probably for the U.S. district court a little easier to answer. That is, I would have to follow, as a U.S. district judge, the precedents established by the court of appeals or the Supreme Court or the State law senior court that I was applying and I would have little chance to make precedential law.

But if there was not any law, I would have to take into account established precedents insofar as were close to the problem that I was working on and listen to both sides and get extremely helpful briefing; even so far as to get amicus involved in a new area. It rarely comes before the district court but I certainly would approach it with an open mind.

Senator **Thurmond**. As I understand, in the district court, the trial court, you feel you should follow stare decisis. In the circuit court or the Supreme Court of the United States then you might more seriously consider reversing the precedent?

Mr. **Reed**. I am sorry, sir. I did not understand the question.

Senator **Thurmond**. In the district court, the trial court, you would follow stare decisis, but if you are on the circuit court, which is an appeals court, or the Supreme Court, which is an appellate court, then you would consider carefully the arguments as to whether some decisions should be reversed? And the Supreme Court of the United States has reversed a number of decisions.

Mr. **Reed**. Yes, sir.

Senator **Thurmond**. Is that your thinking?

Mr. **Reed**. I am aware it has and I accept your analysis sir.

Senator **Thurmond**. Thank you very much. I wish you well.

Senator **Leahy**. We have 9 minutes left in this roll call vote. I wanted to ask some questions about the *Baksalary* case. I was going to propose to go over to vote and then come back and complete this.

Senator Specter.

Senator **Specter**. I have only one comment. I know Mr. Reed very well, and have asked him many, many questions over the years and received satisfactory answers.

I would just echo what Senator Leahy said in quoting Senator Thurmond. The most profound statement I have heard on the Judiciary Committee on nominating matters was what Senator Thurmond said several years ago to two nominees from Pennsylvania when he said, the more power a man or woman has, the more courteous he or she should be.

Thank you very much, Mr. Chairman.

Senator **Leahy**. Thank you.

Let me ask about the *Baksalary* case. That was the case in which there was a class action. Both sides, a class of claimants for workers' compensation, plaintiffs, and class of employers and insurance companies, defendants.

It took about a decade, more than a decade, to litigate. In 1984 a three-judge court struck down a procedural provision of the Pennsylvania workers' compensation law as unconstitutional. Both sides then proposed alternative procedures they wanted the court to order. The court refused to do so, ruling that a Federal court cannot enact State law.

That left you, and I guess several dozen other attorneys in the case, in a position of coming up with a proposal to deal with millions of dollars worth of claims of plaintiffs who claimed to have been denied benefits under the unconstitutional procedure.

Now, within a few weeks you came up with a detailed plan. It was approved by the court. I understand you played a key role in bringing this case to a prompt and successful resolution.

I stop at that point. I am going to come back in just a few minutes as soon as we vote. I would like for you to just tell me about this. I have heard a lot about judicial activism, which made me think of this when Senator Thurmond raised it. Here, the court declined to be activists, declined to rewrite the law, just struck it down. Real people, real claims had to be provided for. You helped to work that out. When I come back if you could just tell us a little bit about it.

Mr. **Reed**. Yes, Mr. Chairman.

Senator **Thurmond**. Mr. Chairman, I cannot be here. I have got another appointment after this.

I just want to tell the other two nominees, Ms. Wood and Mr. Camp, that I have a few questions here. I will ask the Chairman to ask you just two questions each, I believe.

But I want to tell them and the two we have already heard, I think you are all well qualified. I think you will make good judges, and I will be glad to support you.

Senator **Leahy**. Senator Thurmond, I would not mind putting this off to a time that you could come back if you wanted. I would not want you to think that we were not——

Senator **Thurmond**. No, you go right ahead. I do not want you to delay them. I want you to go right ahead.

Senator **Leahy**. The hearing will stand in recess.

[Brief recess.]

Senator **Leahy**. If we could resume.

Mr. Reed, *Baksalary*. How is that pronounced, anyway?

Mr. **Reed**. We pronounced it "back salary" because it had such a euphonious ring to it, having to do with back workers' compensation payments. It is an ethnic name and I do not know how to pronounce it properly.

Senator **Leahy**. Well, you ended up in effect having to put together what some courts or the judge might have done. Just give me some of your general impressions on that because that is such an extraordinary piece of litigation. It is the sort of litigation somebody would do a whole term in law school on, just that one kind of case.

Mr. **Reed**. Yes, sir. Just to focus in, the case was celebrated and lengthy so I will try to focus only on that point.

The part that the court decided that it would not get into was the future of the system after that portion had been struck down. The parties were broadly constituted, being a class action on both sides, with the Commonwealth of Pennsylvania and the State agencies being there as party defendants also; then the Commonwealth, without prejudice, waived the 11th amendment immunity defense. We all sat down in our office at a table and I am told, with some sort of a whip that I apparently pulled out of my back pocket, I was able to get people to realistically come to terms with the technicalities, and as you saw, or your staff has seen, the consent decree was very lengthy and very meticulously drawn.

To add a cap to the resolution, I went through and helped teach the referees how to follow that order and successfully prosecute it forward to get all of those old cases out of the system. Mr. Chairman, I can report that the order was effective and did work.

It was a question of not wanting to wonder what the future would bring and since the Government and the whole industry was at the table, we were able to do it.

Senator **Leahy**. Do you think that was better than if the judge tried to write it out?

Mr. **Reed**. It was better. As a litigator, Mr. Chairman, you know that if you have a client and you can be certain about what the result is going to be, even if it is not the most thrilling result, the certainty somehow carries the day, and we did agree that we did not want the court to decide it.

Senator **Leahy**. I had a senior partner when I first practiced law that used to drum that into me about once a week. He would say, Leahy, I want to tell you something, as though I had never heard it before, and I got that drummed in a lot. Thank you very much, sir, and I appreciate your being here.

Mr. **Reed**. Thank you, Mr. Chairman. It has been an honor.

Senator **Leahy**. Ms. Wood, would you step forward please.

I appreciate your waiting. Would you raise your right hand? Do you solemnly swear the testimony you should give in this matter shall be the truth, the whole truth and nothing but the truth so help you God?

Ms. **Wood**. I do.

Senator **Leahy**. Ms. Wood, do you have an opening statement you would like to make?

Ms. **Wood**. No, Mr. Chairman.

Senator **Leahy**. In the line of ex parte discussions, I want you to know both of your Senators have gone out of their way to say the nicest things about you that are possible.

The one issue that came up is, as I am sure you anticipate, that while you have a superb practice, and in fact I must commend you on your willingness to leave what is a very lucrative practice for what has to be a very, very substantial cut in salary to be a Federal judge, you have not had a great deal of trial experience. And you reported that you had never participated in a full trial that went all the way to verdict or judgment; am I correct in that?

Ms. **Wood**. That is correct.

Senator **Leahy**. You mentioned in your questionnaire the case of *Allon* v. *Hofstra University* in which you represented a plaintiff claiming sex discrimination. That case was settled after 5 days of trial.

Was that a jury or non-jury trial?

Ms. **Wood**. That was a non-jury trial.

Senator **Leahy**. What about jury trials? Have you participated in those?

Ms. **Wood**. No. I have not.

Senator **Leahy**. Let me ask you, you have obviously thought about that.

Are you worried about that? The lack of the jury trial experience.

Ms. **Wood**. I am not, Mr. Chairman. I am familiar with the Rules of Evidence through my practice in the past 19 years, and I believe that with the help of the other judges on the southern district, I can quickly come up to speed on the practical aspects of trying cases.

I have already sat with one judge for a day and I will be doing so with others in the next few months. Chief Judge Brieant has also offered his assistance.

Senator **Leahy**. In jury trials?

Ms. **Wood**. Jury as well as non-jury, yes.

Senator **Leahy**. I would urge you to do it, especially in the jury trials. There is no question you have a superb legal background in your qualifications. Your intellect and legal scholarship is proven, but as one who has tried a lot of cases some time back, I know I was always very eager to try cases before those judges who had had a lot of jury trial experience and very nervous about those who had not had it. If for no other reason than to demonstrate your concern for the litigants who come before you, both plaintiff and defendant, to the extent that you can, demonstrate your own willingness to get experience, not just in the rules of evidence, which we can all learn, but just the nuances of jury trials.

Ms. **Wood**. Yes, Mr. Chairman. I think there is definitely learning that I need to do in the next few months on that.

Senator **Leahy**. Having said that, develop your own techniques in those jury trials. You do not have to slavishly imitate anybody.

Each judge tends to be somewhat different and do not be afraid to be yourself.

There are a thousand criminal cases initiated in the Southern District Court of New York each year. Some of them are complex enough that we read about them on the front page of the New York Times with discrete headlines, and in the other New York papers with more spectacular headlines.

Your practice has been primarily civil law. What about the criminal law experience?

Ms. Wood. I have a limited experience in the criminal area. I am getting up to speed on that through reading materials and watching videotapes from the Federal Judicial Center, as well as sitting with other judges in the southern district. The Federal Judicial Center materials are very helpful on such things as jury instructions, and I am working on that.

Senator Leahy. You have been involved in that Lloyds of London suit, again speaking of—the previous nominee we were talking about a very complex case—that one in itself is one of the most complex antitrust cases that has been along for a long time, is that correct?

Ms. Wood. I believe that is correct, Mr. Chairman.

Senator Leahy. Now, there have been a number of criminal cases that have been filed as a result of that in the past week; am I correct? I meant civil cases.

Ms. Wood. Yes, civil cases. That is correct.

Senator Leahy. They charge that your clients and several American insurance companies conspired to make certain kinds of liability insurance unavailable or unaffordable, is that correct?

Ms. Wood. Those are the allegations, Mr. Chairman.

Senator Leahy. I am not suggesting that you take a position on the case. Prior to your involvement in that case had you had much experience with the complexities of insurance law?

Ms. Wood. I had given antitrust advice to a number of insurers and re-insurers.

Senator Leahy. I might say that, in that case, you have gotten high marks from the other litigants whom our staff and the other investigators have talked to on your ability to handle a complex issue.

My next question might not be one you have gone all the way through and you will be able to supplement your answer if you want. It concerns the potential conflicts of interest that could face you as a judge because of your role in this case.

You state on page 28 of your questionnaire responses that during your initial period of service as a judge any cases involving your former clients such as Lloyds of London could present conflicts of interests. You also include in this category any litigation relating to whether the insurance liability crisis was caused by antitrust violations.

Now, some of the biggest American insurance companies—Allstate, Aetna, Cigna—are named in the lawsuit along with some of your clients. This may take years to resolve.

I would wonder, and you give some thought to this and we will put the question probably even more specifically, but whether you ought to recuse yourself not only from a case involving Lloyds and your other clients but other insurance companies with which your clients are alleged to have conspired? Have you thought about that?

Ms. **Wood**. I have, Mr. Chairman, and I would certainly give thought to that down the road, and, where appropriate, seek the advice of the Commission on Judicial Ethics.

Senator **Leahy**. I might say, in seeking the advice of the Commission, I wish more judges were willing to do that. That is an obvious and easy way to handle it.

Well, I thank you very much and I appreciate you being here.

Did Senator Thurmond have any questions?

Mr. **Short**. Mr. Chairman, the nominee can just respond in writing to the questions and that would be sufficient.

Senator **Leahy**. Fine.

Senator Thurmond will submit some questions in writing if you could respond to those, please.

Ms. **Wood**. Certainly, I will.

Senator **Leahy**. Thank you very much.

Ms. **Wood**. Thank you very much.

[Response to questions follows:]

LEBOEUF, LAMB, LEIBY & MACRAE
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
520 MADISON AVENUE
NEW YORK, NY 10022
(212) 715-8000
TELEX: 423416 FACSIMILE: 212-371-4840
LEBOEUF, LAMB, LEIBY & MACRAE (UK)
LONDON, ENGLAND
LEBOEUF SUNDSTRÖM FERRY
BRUSSELS, BELGIUM

WASHINGTON, DC
SALT LAKE CITY, UT
RALEIGH, NC
SAN FRANCISCO, CA
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NEWARK, NJ
JACKSONVILLE, FL

March 29, 1988

The Honorable Strom Thurmond
Senate Committee on
the Judiciary
Room 138
Dirksen Building
Washington, D.C. 20510

Dear Senator Thurmond,

I enclose my answers to the two questions you set forth to me in writing at my hearing on March 24.

Sincerely,

Kimba M. Wood

Kimba M. Wood

KMW/pcr
ENCLOSURE
cc: The Honorable Joseph R. Biden, Jr. (w/encls.)

Questions for Kimba M. Wood, of New York, to be United States District Court Judge for the Southern District of New York

1. Ms. Wood, what are the standards that you would use in deciding that your court had a continuing administrative responsibility to oversee the implementation of one of its orders?

   I would be guided by the separation of powers doctrine, which commits to the executive branch the task of administering the laws. If it were brought to my attention that an administrator was violating one of my orders, I would make clear to the administrator and his or her superior, as appropriate, their duty under the law. I would seek to avoid assuming administrative responsibilities that are committed to another branch of government.

2. Ms. Wood, do you believe changes in the law should be reserved to the legislature, whose members can be altered by the voters if the elected officials fail to reflect the values of society?

   Yes. One reason judges are appointed for life is to separate them from the political process. Precisely because they are separate from the political process, and cannot be voted out of office, they should not change the law. Such changes should be reserved to the elected representatives of the people.

LEBOEUF, LAMB, LEIBY & MACRAE
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
520 MADISON AVENUE
NEW YORK, NY 10022
(212) 715-8000
TELEX: 423416 FACSIMILE: 212-371-4840
LEBOEUF, LAMB, LEIBY & MACRAE (UK)
LONDON, ENGLAND
LEBOEUF SUNDSTRÖM FERRY
BRUSSELS, BELGIUM

WASHINGTON, DC
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March 30, 1988

EXPRESS MAIL

The Honorable Patrick Leahy
Committee on the Judiciary
Room SD-224
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy,

I enclose my responses to the questions posed to me in your March 29, 1988 letter to me.

I enjoyed appearing before the Committee last Thursday, and I appreciate your courtesy during the hearing.

Sincerely,

Kimba M. Wood

Kimba M. Wood

KMW/pcr
ENCLOSURE

1. On August 10, 1987, a Special Master in the U.S. District Court for the Western District of Texas entered an order in the case of The Corporation of Lloyd's v. Lloyd's U.S., C.A. No. A-86-CA-066. The order found that a prima facie showing had been made that the plaintiffs in this case had sought legal advice from your law firm with the specific intent of using that advice or work product in order to carry out a crime or fraud. Accordingly, the Special Master found that certain materials were discoverable under the "crime-fraud exception to the attorney-client privilege." A copy of the order is attached.

It appears that the client represented by your firm in this case may be the same as or related to the client you represent in the multi-state investigation reported on pages 10-12 of your questionnaire responses.

(a) Please describe briefly your involvement, if any, in the case of The Corporation of Lloyd's v. Lloyd's U.S. in the Western District of Texas.

(b) The defendants in this case apparently sought to discover certain communications between the plaintiffs and their attorneys from your law firm, including notes of attorney-client conversations and at least one memorandum prepared by your law firm. Were you a participant in any of the communications or conversations that were ruled discoverable in this case because of the "crime-fraud exception"? Did you participate in drafting any memoranda that were ruled discoverable? If so, please provide full details.

1(a) My involvement in the referenced case was limited to twenty-four hours of work in September 1987, during which time my work was limited to a review of antitrust legal conclusions previously reached by associates in the case; a review of relevant factual materials; explaining my conclusions to the client, the client's in-house counsel, and the client's Texas counsel; and preparation of part of a submission to the client relating to points to consider in deciding whether to settle the case.

(b) No. No.

2. Your questionnaire responses indicate that you have been actively involved in the work of the American Bar Association and the New York State Bar Association, as well as other groups. What have been your principal accomplishments in this field? How will this experience help you carry out the duties of a U.S. District Judge?

2. My principal accomplishments in connection with my bar association work included the development of a position paper on proposed antitrust legislation to modify the

Illinois Brick rule, and testimony in the Senate and the House of Representatives in connection therewith; development of a position paper regarding the 1983 proposed amendments to the Federal Rules of Civil Procedure; and planning and producing certain educational programs within the Civil Practice and Procedure Committee of the ABA Antitrust Section and the New York State Bar Association Antitrust Law Section.

This experience will help me carry out the duties of a U.S. District Judge by, among other things, its having familiarized me with a wide range of procedural options available to a judge to impose appropriate limits on discovery and to foster resolution of cases without the need for trial.

3. Based on your experience in complex litigation, what are the key elements for successful judicial management of cases involving hundreds or even thousands of parties and claims?

The key elements for successful judicial management of cases involving hundreds or even thousands of parties and claims are:

1. The judge should become involved early in the case in establishing continuing control of the case, including encouraging early definition of issues, identifying the types of discovery needed and the most efficient way to obtain that discovery, and establishing schedules for the timely completion of the various phases of the case, including trial.

   In pretrial conferences with counsel pursuant to Rules 16 and 26(f), the judge can consider these and other means of handling the case efficiently and expeditiously.

2. The judge should encourage the filing of dispositive motions where appropriate, and should rule on them promptly.

3. The judge should consider ways to simplify trial where feasible; for example, some multi-party and multi-claim trials have been simplified by bifurcating the liability phase of the trial from the damage phase, which can be advantageous in making the case easier for the fact-finder to understand, and can encourage settlement before trial of the damage phase.

4. Some people have suggested that the traditional method of handling legal disputes -- in an adversary setting, and often before a jury of ordinary citizens -- is incapable of balancing the competing interests involved in mass tort

litigation. Do you agree? Can the courts effectively handle these claims, or is some other forum more appropriate?

4. I do not agree with the suggestion in the first sentence of this question. I believe that courts can effectively handle these claims with procedures presently available to them, and I do not believe that another forum would be more appropriate for the handling of these claims.

I hereby swear that the foregoing answers are accurate.

Kimba M. Wood

Kimba M. Wood

Sworn to before me
this 30th day of March, 1988

Maria Havelka

Notary Public

MARIA HAVELKA
otary Public, State of New Y
No. [illegible]976
Qualified in Queens County
[illegible] Expired August [illegible]

Senator LEAHY. I should note to the people who have been here, and I should have mentioned this at the beginning, anyone who has testified and wishes to leave on a day like this, I would not want to be the one holding you in the room. There will be no affront to the committee if any of you want to leave and enjoy the sunshine. I will feel jealous but I certainly will not take any affront. Please feel free to do so.

The staff gets up and leaves. Thanks an awful lot. [Laughter.]

You know, it is rare that the staff will ever leave Senators alone because we are merely constitutional impediments to our staff and they like not to let us out of their sight.

Mr. Camp, would you please come forward?

Do you solemnly swear the testimony you should give in this matter shall be the truth, the whole truth and nothing but the truth so help you God?

Mr. CAMP. I do.

Senator LEAHY. Mr. Camp, do you have an opening statement you wish to make?

TESTIMONY OF JACK T. CAMP, JR., NEWNAN, GA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

Mr. CAMP. No, Mr. Chairman. I would like to say I appreciate the privilege of being here before the committee today. I think being nominated for the Federal judiciary is the finest honor I have had since I have been practicing law.

Senator LEAHY. Thank you. I understand several years ago you served on an indigent defender panel in your home county.

Mr. CAMP. Yes, sir.

Senator LEAHY. Can you tell me what that does?

Mr. CAMP. Yes, sir. We had a situation where there was no public defender nor were there any State funds available to pay appointed counsel to represent indigent defendants and the local bar association, as a result of the constitutional requirement of providing a defense to indigent defendants, organized a defender panel which on a rotating basis took appointments of indigent cases, anything from capital felonies to misdemeanor cases.

There was a nominal amount paid by the county but largely the time was donated by the members of the panel for the indigent defense.

Senator LEAHY. If that is like most of these things, it probably cost you a heck of a lot more to have your office open during that time than you were getting paid for the thing; is that right?

Mr. CAMP. It certainly did. But it was wonderful trial experience. I had the opportunity to try criminal cases that I might not have had the opportunity to try otherwise.

Senator LEAHY. Do you have any idea how many cases you handled in that time?

Mr. CAMP. Yes, sir. I expect I tried 15 or so through to verdict and judgment, including a couple of capital felonies.

Senator LEAHY. I am glad to see you did that because I think it is extremely important that lawyers have that kind of, in effect, pro bono work. I think every member of the bar has that kind of responsibility. We get kind of a favored position in society if we are members of the bar and it is a good way to give a little bit of it back.

Most of your litigation work has been in State courts; is that correct?

Mr. CAMP. Yes, sir.

Senator LEAHY. Did you ever handle any discrimination cases?

Mr. CAMP. No, sir, I have not.

Senator LEAHY. How about cases in the labor law area?

Mr. CAMP. No, sir. I have not handled any labor law cases.

Senator LEAHY. Do you have concerns about getting up the speed on these? I mean, these are cases that seem to be coming more and more before the court you would be sitting on.

Mr. CAMP. Yes, sir, I do. I have given thought not only to that area but to a number of other areas where I have not had the experience that I would have liked to have had.

But I think, as Ms. Wood mentioned, the Federal Judicial Center provides very good resources and I am fortunate to come from a district where there will be 10 other active judges that are very generous with their time in allowing new judges to actually sit with them on cases.

So that I think with preparation and hard work, I can make up for that lack of experience.

Senator LEAHY. You also said in your questionnaire that you anticipated some conflicts might arise for you on the bench in cases raising constitutional challenges to municipal ordinances that you helped draft and cases involving prior clients of which you have some personal knowledge.

Mr. CAMP. Yes, sir.

Senator LEAHY. How would you deal, for example, with a case in which you did not have personal knowledge but might have been handled by one of the partners in your firm?

Mr. CAMP. I think I would also have to recuse myself from that, Mr. Chairman. But since I responded to the questionnaire I have done some additional reading and perhaps if I were answering the question again I think I would broaden my answer a little.

I have noticed that many judges, particularly in districts that are fortunate enough to have a number of judges, have a policy of not taking any cases which involve their former firm or which involve former clients, for a number of years, either a 3-, or 4-, or 5-year period.

And I think that sort of prophylactic period is a very good idea. It protects you from cases where you might have a conflict and not realize initially that there is a conflict there.

Senator LEAHY. I wonder if you might, now that you have looked at that, probably just supplement that one part of your questionnaire with that.

Mr. CAMP. I would be delighted to, Mr. Chairman.

[The following was received after the hearing:]

March 25, 1988

Honorable Patrick Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

I would like to supplement my answer to Part II, Question 2 on the questionnaire which I submitted to the Senate Judiciary Committee as follows:

> Two areas of particular concern with regard to conflicts of interest are cases in which members of my present law firm are involved or matters involving present or former clients of my firm. Such matters present the appearance of a possible conflict of interest, if not an actual conflict. As a result, I will suggest to my Chief Judge that I be assigned no cases involving either former clients or members of my former firm for at least a period of three to five years. Even after that initial period, cases would have to be monitored on a case by case basis to ensure that none present the appearance of a conflict.

If I can furnish either you or the Committee any further information, I will be delighted to do so.

Sincerely,

Jack T Camp Jr.

Jack T. Camp, Jr.

Senator **Leahy**. And I agree with you. I mean, that is an easy way. It is kind of an arbitrary thing but it is an easy way to avoid even the appearance of conflict. I think sometimes we have to be a lot more careful about the appearance of conflict. Most judges I have known who see somebody that they associated with previous to going on the bench, if anything, they are bending over backwards more to be scrupulously fair and bring even more attention to it.

So it is a good easy way to do it.

You own some stock in a number of companies, bonds in some local authorities. What do you do if one of those companies or local authorities come before you?

Mr. **Camp**. I have read advisory opinions that indicate that it is not necessarily a conflict to sit in a case in which a city is a party although you happen to own bonds of an authority of that city.

But I think, as you pointed out, that the appearance of impropriety there might outweigh the actual technical conflict and unless my chief judge felt differently, I would be inclined to recuse myself from the case.

Senator **Leahy**. I understand you recently resigned from one of the Newnan clubs. You had been a member there since 1976. Why was it you resigned?

Mr. **Camp**. Well, I had not been to the club in 5 or 6 years and when I became aware of the ABA comment with regard to clubs that discriminate, I checked the by-laws and it is a fraternal organization. It is the Elks Club and it does exclude women from membership so I resigned because I did not feel that that is appropriate to present the appearance of belonging to a club that excludes women from membership.

Senator **Leahy**. Mr. Camp, I am impressed by your answers. You know, we put requirements on judges that we do not put really on anybody else in public office. They are very tough requirements.

I suspect that in a number of instances they are unnecessary because of the quality of the men and women who do go on our bench. But they are there, again, because while we put those extra restrictions, we also give enormous power to individual judges and I think you understand that. I see nothing in your background, whether you had resigned from that club or not, for example, that shows a scintilla of a discriminatory nature in your own background.

But you also, by resigning, make it impossible for anybody even to suggest that the judge and the particular court which he sits in is anything but neutral and I commend you for it.

I am pleased to have you here, sir.

Senator Thurmond may have a difficult time confirming you, but I do not think he will.

Mr. **Short**. Senator Thurmond, I think, agrees, too.

Senator **Leahy**. Do you think Senator Thurmond is okay? Is he okay on this one? [Laughter.]

Mr. **Short**. He is okay on this one. One of the few, but he does support this one.

Senator **Leahy**. I suspect you understand by what you have heard here this afternoon you should probably go get measured for the robe while you are in town.

Thank you very much, sir.

Mr. CAMP. Thank you, Mr. Chairman.

Senator LEAHY. We stand in recess.

[Whereupon, at 4:15 p.m., the committee adjourned subject to the call of the Chair.]

QUESTIONS FROM SENATOR THURMOND FOR JACK T. CAMP, OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

1. MR. CAMP, ONE OF THE CHARACTERISTICS OF JUDICIAL ACTIVISM IS SAID TO INCLUDE A TENDENCY BY THE JUDICIARY TOWARD PROBLEM-SOLUTION RATHER THAN GRIEVANCE-RESOLUTION. WOULD YOU GIVE THE COMMITTEE YOUR VIEWS ON THIS CRITICISM?

ANSWER: MY INTERPRETATION OF "PROBLEM-SOLUTION" AS USED IN THE SENATOR'S QUESTION IS THAT IT REFERS TO THE TENDENCY OF SOME JUDGES TO ATTEMPT TO SOLVE BROAD SOCIAL OR ECONOMIC PROBLEMS RATHER THAN RESTRICT THEMSELVES TO THE GRIEVANCES PRESENTED BY THE LITIGANTS ACTUALLY BEFORE THE COURT. AS SUCH, IT WOULD INFRINGE UPON THE RESPONSIBILITY OF THE LEGISLATURE AND VIOLATE THE SEPARATION OF POWERS DOCTRINE. BOTH THE CONSTRAINTS OF THE CONSTITUTION AND THE PRACTICAL LIMITATIONS ON OUR ADVERSARIAL SYSTEM SHOULD REQUIRE COURTS TO LIMIT THEMSELVES TO THE GRIEVANCES PRESENTED BY ACTUAL LITIGANTS.

2. MR. CAMP, THERE IS OFTEN A CONFLICT BETWEEN DEEPLY-FELT CONSTITUTIONAL VIEWS OF A FEDERAL JUDGE AND THE CONSTRAINTS OF JUDICIAL PRECEDENT. WOULD YOU TELL THE COMMITTEE HOW YOU WOULD RESOLVE THE TENSION BETWEEN PERSONAL JURISPRUDENCE AND PRECEDENT?

ANSWER: A TRIAL JUDGE, AS I HOPE TO BE IF CONFIRMED, SHOULD APPLY BINDING PRECEDENT REGARDLESS OF HIS PERSONAL VIEWS. ONLY WHEN THERE IS NO BINDING PRECEDENT ON AN ISSUE DOES A TRIAL JUDGE HAVE THE RESPONSIBILITY OF INTERPRETING CONSTITUTIONAL PROVISIONS. THIS IS A REQUIREMENT OF STARE DECISIS AND NECESSARY FOR AN ORDERLY RULE OF LAW.

Jack T. Camp

JACK T. CAMP

DAVID M. EBEL

Birth:	June 3, 1940	Wichita, Kansas
Legal Residence:	Colorado	
Marital Status:	Married	Cayle Ann Ebel four children
Education:	1958 - 1962	Northwestern University B.A. degree
	1962 - 1965	University of Michigan Law School J.D. degree
Bar:	1967	Colorado
Experience:	1965 - 1966	Law Clerk to Hon. Byron R. White, Supreme Court of the United States
	1966 - present	Davis, Graham & Stubbs Associate 1966-1969 Partner 1970-present
	1987 - present	University of Denver College of Law Adjunct Professor
Office:	370 17th Street, Suite 4700 P.O. Box 185 Denver, Colorado 80201 303 892-9400 303 892-7344 (direct dial)	
Home:	5190 So. Juniper Street Littleton, Colorado 80123 303 797-3[illegible]0	

To be United States Circuit Judge for the Tenth Circuit

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**

   David Milton Ebel

2. **Address: List current place of residence and office address(es).**

   5190 So. Juniper St.
   Littleton, CO 80123
   (303) 797-3420

   Davis, Graham & Stubbs
   370 17th Street, Suite 4700
   P. O. Box 185
   Denver, CO 80201 (80202 for street address)
   (303) 892-9400, Direct Dial (303) 892-7344

3. **Date and place of birth.**

   June 3, 1940, Wichita, Kansas

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   Married to Gayle Ann Ebel (Nordby)

   She is a reading teacher at Peabody Elementary School, 3128 E. Maplewood, Littleton, Colorado 80121. Her employer is the Arapahoe School District No. 6 (Littleton School District), 5776 S. Crocker, Littleton, Colorado 80121

5. **Education. List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   Northwestern University
   Evanston, IL
   1958-1962 - B.A. (June 1962)

   University of Michigan Law School
   Ann Arbor, MI
   1962-1965 - J.D. (June 1965)

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were**

connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment

From	To	Company	Relationship
1/87	3/87	D.U. Law School	Adjunct Prof. of Law teaching Corporations. (I will be teaching the same course again this winter quarter.)
7/66	Date	Davis, Graham & Stubbs	Associate 7/66 to 12/69 Partner 1/70 to Date
8/65	7/66	U.S. Supreme Court Justice Byron R. White	Law Clerk
7/64	7/65	Michigan Law Review Univ. of Michigan	Editor-in-Chief Michigan Law Review
7/64	8/64	University of Michigan Professor Polasky	Legal research for Professor Polasky
6/64	7/64	Gibson, Dunn & Crutcher	Summer Clerk
6/63	9/63	Nabisco	Summer route salesman
9/62	6/63	University of Michigan Law School Library	Library assistant while going to law school
6/62	9/62	Nabisco	Summer route salesman

Other Entities In Which I Have Served As An Officer, Director, Partner, Proprietor Or Employee Since College on a Volunteer Basis Without Pay

From	To	Entity	Relationship
1985	Date	Center for Business Resources (For profit subsidiary corporation of the Colorado Assn. of Commerce and Industry, a nonprofit corporation)	Board of Directors, Secretary, Counsel
1983	Date	Colorado Judicial Institute (Nonprofit corporation to improve administration of justice	Director

1982	Date	Republican Vacancy Comm. for Twenty-Sixth Senatorial District, State of Colorado	Vice-Chairman 1982-86 Chairman 1986-Date
1982	1986	Arapahoe County Republican Party	Executive Committee and Counsel
1981	1982	Colorado Bar Association (Nonprofit state bar association)	Vice President
1973	1974	Colorado Bar Association	Board of Delegates
1975	1979	Colorado Big Brothers, Inc. (Nonprofit entity that administers the Big Brother program in Colo.)	Board of Directors
Apx. 1970		Walnut Hills Civic Association (Nonprofit homeowners association)	President

Investment Paertnerships Where I Have Been
A Passive Investor-Partner Since College

From	To	Entity	Relationship
Apx. 1985	Date	Inantea Associates IV	Small passive investor in oil and gas interests
Apx. 1984	Date	Inantea Associates III	Small passive investor in oil and gas interests
Apx. 1983	1986	Inantea Associates	Small passive investor in oil and gas interests
1982	Date	Cobblers 1982	Small passive investor in oil & gas interests and in a cable TV company, etc.

7. **Military Service**: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Northwestern University
- Hardy Debate Scholarship
- Graduated with Departmental Honors in Economics
- Elected to Norlegamma and Deru, the junior and senior men's honorary fraternities

University of Michigan Law School
- Editor-in-Chief of Michigan Law Review
- Order of Coif
- Barristers Society

Professional

- Fellow, American College of Trial Lawyers

9. **Bar Associations**: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association
- Chairman of Litigation Section Committee on Litigation Management & Economics (1979-80)

Colorado Bar Association

- Vice President (1981-82)
- Board of Governors (1973-74)
- Chairman, Committee on Alternatives to Adversary Dispute Resolution (1977-80)

Denver Bar Association

- Chairman, Committee on Legal Services to the Poor (apx. 1968-69)

American College of Trial Lawyers

- Fellow (1982 to date)
- Committee member, State Committee (1988)

Colorado Supreme Court Standing Committee on Rules of Civil Procedure

Member (1978-Date)

Colorado Judicial Institute

Director (1983 to Date)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I belong to no organizations that are involved in lobbying.

Other organizations to which I belong, but which do not engage in lobbying, are the following:

Davis, Graham & Stubbs

American, Colorado and Denver Bar Associations

Colorado Judicial Institute

American College of Trial Lawyers

St. James Presbyterian Church

Town & Gown Society

The Law Club

Bow Mar Owners, Inc.

Republican Party

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

All Colorado State Courts - April 5, 1967
U. S. District Court for Colorado - April 5, 1967
Tenth Circuit Court of Appeals - July 8, 1969
United States Supreme Court - August 1, 1978
U. S. Tax Court - May 1, 1980

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you

have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Comment, Subcontracting Clauses and Section 8(e) of the National Labor Relations Act, 62 Mich. L. Rev., pp. 1176-1199 (1964).

Note, Copyrights--Limitations on Proprietor's Exclusive Right to Vend, 62 Mich. L. Rev., pp. 1254-1259 (1964).

Landlord-Tenant Mediation Project in Colorado, 17 Urban L. Ann., pp. 279-286 (1979).

Bar Programs--Other Ways to Resolve Disputes, Litigation, pp. 25-27 and 52, Vol. 6, No. 2 (Winter 1980).

I edited all eight issues of Vol. 63 of the Michigan Law Review in my capacity as Editor-in-Chief.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Excellent.
December 15, 1987.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None (although I have served as an arbitrator on several small matters).

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

N/A

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

From approximately 1974 to date I have been the Republican precinct committeeman for Precinct [illegible], Arapahoe County, Colorado. In the early years I was elected to this position by the voters of my precinct during the primary election. In later years I was elected to this position by the qualified voters who attended the biannual precinct caucus.

From about 1982 to 1986 I was vice-chairman, and from 1986 to date I was chairman, of the Republican Vacancy Committee for the Twenty-sixth Senatorial District, State of Colorado. I was elected to this position by the members of the Twenty-sixth Senatorial District Committee.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Clerk to Justice Byron R. White,
United States Supreme Court
August, 1965 to July, 1966

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Davis, Graham & Stubbs
370 17th Street, Suite 4700
Denver, CO 80202
August, 1966 to December 31, 1969 -
Associate
January 1, 1970 to date - Partner

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

From 1966 until about 1985, most of my practice was in the area of civil litigation, with particular emphasis on large complex litigation.

In 1985 I switched emphasis to a more general corporate and business practice, although I have retained some litigation, particularly appellate litigation.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

LITIGATION (I have not really specialized in any one area, but rather have had a diverse mix of cases in many different areas.)

Commercial Contracts

United Telecommunications, Inc.
General Atomic Company
(now GA Technologies, Inc.)
United Airlines, Inc.
American Republic Insurance Company

Mergers and Acquisitions

Burlington Northern Railroad Company
General Recreation, Inc.

Antitrust

Humble Oil Company
Sundstrand Corporation
United Airlines, Inc.
Mobile Home Communities

Securities

Boettcher & Company

Product Liability

General Motors Corporation
Nissan Motor Corp. in USA

Accountants Liability

Deloitte Haskins & Sells
(formerly Haskins and Sells)

Personal Injury

Burlington Northern Railroad Company
Chicago, Rock Island & Pacific R.R. Co.

Taxation

Ideal Basic Industries, Inc.

Mining and Natural Resources

W. R. Grace & Co.

Municipal Law

City of Thornton
Town of Bow Mar

Employment and Discrimination Law

United Airlines, Inc.
The Marley Company

Criminal Law

My criminal defense cases resulted from court appointments to represent indigent defendants in the U.S. District Court for the District of Colorado and before the Tenth Circuit Court of Appeals. In addition, I was appointed by the United States Supreme Court to brief and argue a case before that Court for an indigent pro se appellant--*Hicks v. Oklahoma*, 447 U.S. 343, 100 S.Ct. 2227, 65 L.Ed.2d 175 (1980). I have also prosecuted municipal offense cases for the Town of Bow Mar as its Town attorney.

Miscellaneous Matters

Will contest
Libel and slander
Patent

CORPORATE

General Corporate Advice

Auto-trol Technology Corporation, acting general counsel from approximately September 1985 to July 1986.
Fanch Communications Inc.
Town of Bow Mar, Town Attorney

Mergers and Acquisitions

The Davis Companies, Inc.
(Davis Brothers Drug Company)
Weitz Construction Company
Davis Companies (Thompson and David Davis)

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I appeared in court fairly frequently from 1966 to about 1985, and less frequently after that date as I began to provide more general corporate advice. My litigation practice in the last several years has tended to be concentrated at the appellate level.

2. **What percentage of these appearances was in:**

(a) federal courts;	(75%)
(b) state courts of record;	(20%)
(c) other courts.	(5%)

3. **What percentage of your litigation was:**

(a) civil;	(95%)
(b) criminal.	(5%)

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I have tried to final verdict or judgment in courts of record eight cases as sole counsel,* two cases as chief counsel, and at least five or six cases as associate counsel. Because I have specialized in large, complex civil litigation, the actual number of cases going through trial is not as high as it would have been had I specialized in smaller or more routine litigation. I have, of course, also tried many matters on evidentiary hearings, such as hearings on application for preliminary injunction, and I have argued a fair number of cases before the Tenth Circuit and other appellate courts where I was not trial counsel. In addition, I have prosecuted many traffic trials which were in a municipal court that was not a court of record.

*Because of the complex nature of many of these cases, I often had associate help, although I was the sole trial counsel.

5. What percentage of these trials was:
   (a) jury; (55%)
   (b) non-jury. (45%)

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) The date of representation;
(b) The name of the court and the name of the judge or judges before whom the case was litigated; and
(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Hicks v. Oklahoma, United States Supreme Court, 447 U.S. 343, 100 S.Ct. 2227, 65 L.Ed.2d 175 (1980). Case argued March 26, 1980.

   a. My Role. I briefed and argued this case in the United States Supreme Court on behalf of petitioner Flynn Noye Hicks. I was appointed by the United States Supreme Court to represent Mr. Hicks following the Court's grant of his pro se petition for certiorari.

b. Summary of Case. The defendant, Flynn Noye Hicks, was convicted in a state court in Oklahoma of unlawful distribution of a controlled substance in violation of Oklahoma law. He was sentenced by the jury to an enhanced 40-year sentence under Oklahoma's mandatory sentencing statute for habitual offenders, 21 O.S. Supp. 1977, § 51(B), because he had previously been convicted of two prior felonies.

Subsequent to Hicks' trial but before his appeal was heard in the Oklahoma Court of Criminal Appeals, that court ruled, in an unrelated case, that 21 O.S. Supp. 1977 § 51(B) was unconstitutional. When Hicks' appeal reached the Oklahoma Court of Criminal Appeals, that court affirmed his conviction and upheld his enhanced 40-year sentence under a different, discretionary sentencing statute, 21 O.S. Supp. 1977 § 51(A). The discretionary statute provided that a defendant with at least one prior felony conviction may, upon his second or later conviction, be sentenced to any term from 10 years to life. The court ruled that, since Hicks could have been sentenced to the same 40-year sentence under §51(A), it was not prejudicial to affirm his sentence under that provision even though he had originally been sentenced under § 51(B), which gave the jury no discretion as to the length of the sentence. The Court of Criminal Appeals did not remand the case for jury imposition of sentence even though Oklahoma has a statute that requires all criminal sentences to be imposed by a jury.

Hicks filed a pro se petition for certiorari to the United States Supreme Court, alleging that his enhanced sentence violated the due process and equal protection clauses of the Fourteenth Amendment and the cruel and unusual punishment clause of the Eighth Amendment of the United States Constitution. The United States Supreme Court granted certiorari and I was appointed to represent Hicks before the United States Supreme Court.

The main issues raised before the Supreme Court were the following:

1) **Was Hicks denied due process when he was initially sentenced under a mandatory recidivism statute and when his sentence was then affirmed at the appellate level under a different, discretionary recidivism statute which had not been submitted to the sentencing jury and under which Hicks was given no opportunity to present mitigating evidence?**

2) Was Oklahoma's discretionary recidivism statute, § 51(A), unconstitutional under the due process clause of the Fourteenth Amendment because it established no standards or restraints upon the exercise of sentencing discretion between a range of 10 years and life imprisonment?

3) Was it cruel and unusual punishment in violation of the Eighth Amendment to sentence Hicks to 40 years imprisonment for his third felony offense of selling $50 worth of heroin?

4) Was Hicks denied equal protection of the law in violation of the Fourteenth Amendment when the Oklahoma appellate court affirmed his sentence under the discretionary sentencing statute without remanding to allow a jury to exercise its discretion in setting the length of the sentence, while all other defendants who were sentenced under § 51(A) in the first instance had the opportunity to have a jury determine their sentence?

The United States Supreme Court, in an opinion written by Justice Stewart, reversed Hicks' conviction on an 8-1 vote. The Court held, in accord with argument 1), above, that Oklahoma had denied Hicks due process when it affirmed his sentence under a different statute than the one under which he was initially sentenced without remanding for the jury to exercise its discretion under § 51(A). The Court did not address the other issues raised.

c. Significance of the Case. The case establishes that a state cannot affirm a sentence under a different statute, than that relied upon when the sentence was imposed.

Because the Court ultimately decided the case on the narrowest issue presented to it (as it should have done), the Court did not take the opportunity to address the broader constitutional issues that were raised. However, it was important to have raised the broader issues, even if they were not resolved in this case.

d. Other Counsel. The State of Oklahoma was represented by Janet L. Cox. Her present address and telephone number are: Janet L. Cox, 5901 N. Western, Suite 301, Oklahoma City, OK 73118, (405) 848-0315.

2. City of Northglenn v. City of Thornton. Trial was in the District Court for Adams County, Colorado, before Judge Oyer Leary on January 13-17, 1975. (Civil Action No. 21370.) The trial judgment was affirmed by the Colorado Supreme Court on June 6, 1977 in a unanimous opinion issued by Chief Justice Pringle, 193 Colo. 536, 569 P.2d 319 (Colo. 1977).

a. My Role. I represented the City of Thornton, both at the trial and at the Colorado Supreme Court. There were other defendants, but the controversy was essentially between Northglenn and Thornton, and accordingly, I was the lead defense counsel at all stages of the litigation.

b. Summary of Case. The City of Thornton was sued by the City of Northglenn over the issue of which city owned the water and sewer facilities that served the Northglenn residents.

The water and sewer facilities in question were initially constructed and owned by the City of Thornton to supply contract water and sewer services to customers who lived in an unincorporated area contiguous to Thornton. Later, a portion of that area was incorporated as the City of Northglenn. Northglenn alleged in this suit that it had acquired title to the water and sewer facilities serving its residents at the time it was incorporated. It asserted ownership on the alternative theories that (1) the facilities were dedicated to the public when they were placed under dedicated streets, or

(2) the facilities serving the Northglenn residents should be deemed to be held by Northglenn in constructive trust for the benefit of its residents because the residents purchased equitable ownership in the facilities when they purchased their homes. Judge Leary ruled against Northglenn and in favor of Thornton's continued ownership of such water and sewer facilities.

Northglenn appealed to the Colorado Supreme Court. The case raised so many important and novel issues of constitutional, municipal, and statutory law that the Colorado Supreme Court allowed each side to file opening briefs of 150 pages in length. Among the issues addressed were the following: statutory dedication, common law dedication, constructive trust, municipal authority, estoppel, bona fide purchaser defense, Colorado and United States Constitutional issues of taking property without just compensation, statutes of limitations, res judicata, stare decisis, and various procedural and evidentiary issues.

c. Significance of the Case. This was a hotly contested case, not only because the facilities in question were valued at somewhere between $15,000,000 and $20,000,000, but also because of the intense rivalry between the two cities. Ownership and control of the water and sewer facilities provided significant leverage in the many disputes between the two cities over annexation and other issues. The case was also significant because it clarified Colorado law of dedication and it affirmed the right of one city to maintain public utilities under the streets of another city and to supply utility services to the residents of the other city.

d. Other Counsel. The Thornton City Attorney at the time of the trial was Orrel A. Daniel. His present address and telephone number are as follows: Orrel A. Daniel, 105 Bridge Street, Brighton, CO 80601, (303) 659-0731. The other defendants included Adams County and many of the major developers in the area. The names, addresses and telephone numbers of their counsel are as follows: Alexander Makkai, 2325 W. 72nd Ave., Denver, CO 80221, (303) 427-7584; M. Edward Burns, Jr., 1355 S. Colorado Blvd., #602, Denver, CO 80222, (303) 757-4848; Westel B. Wallace, 5353 W. Dartmouth Ave., #303, Denver, CO 80227, (303) 987-1128; Harry L. Hobson, Holland & Hart, 555 17th Street, #2900, Denver, CO 80202, (303) 295-8157. Counsel for the plaintiff, City of Northglenn, was John S. Carroll. His present address and telephone number are as follows: John S. Carroll, 5130 W. 80th Ave., #102, Westminster, CO 80030, (303) 427-2454.

3. United Telecommunications, Inc. v. American Television and Communications Corporation. Trial to a jury from March 31-April 9, 1975 in the U.S. District Court for the District of Colorado, J. Matsch presiding. (Civil Action No. C-5553.) Affirmed by the Tenth Circuit Court of Appeals in a unanimous opinion written by J. Doyle, 536 F.2d 1310 (10th Cir. 1976).

   a. My Role. I represented the plaintiff, United Telecommunications, both at trial and at the Tenth Circuit.

   b. Summary of Case. United Telecommunications, Inc. ("United") sold certain cable television properties to American Television and Communications Corporation ("ATC") in exchange for shares of unregistered ATC stock. As part of the transaction, ATC agreed that it would, at United's request, prepare and file a registration statement to register the transferred shares and that it would use its "best efforts" to cause such registration statement to become and remain effective. ATC subsequently failed to register the shares when requested to do so by United, thereby preventing United from selling its shares until after they had declined substantially in price. United sued for damages on the theory that ATC had failed to use its "best efforts" to register such shares when demanded.

      The jury returned a verdict in favor of United for $2,012,500. ATC appealed that verdict and judgment to the Tenth Circuit. The primary issues raised on appeal were (1) what is the extent of a "best efforts" obligation to register securities, and (2) was United entitled to recover out-of-pocket borrowing costs as damages where prejudgment interest was not allowed? The case also raised evidentiary issues and issues of estoppel, waiver and ratification. The Tenth Circuit affirmed the verdict for United in a unanimous opinion written by J. Doyle.

c. Significance of the Case. The case is significant because of the holding that the defendant's efforts to register its stock did not constitute "best efforts," and it upheld a higher obligation than the term "best efforts" typically requires in an underwriting context. It also recognized out-of-pocket borrowing costs as an element of compensatory damages separate and apart from prejudgment interest.

d. Other Counsel. The in-house counsel for United Telecommunications was Joseph D. Whiteman. His present address and telephone number are as follows: Joseph D. Whiteman, Parker-Hannifin Corporation, 17325 Euclid Ave., Cleveland, OH 44112, (216) 531-3000. ATC's counsel was Harry Hobson of Holland & Hart, 555 17th Street, #2900, Denver, CO 80202, (303) 295-8157.

4. Johnson v. Thomas Chilcott, Boettcher & Company, et al., Civil Action No. 82-C-889 in the United States District Court for the District of Colorado (J. Carrigan), with rulings at 590 F. Supp. 204 (D. Colo. 1984); 599 F. Supp. 224 (D. Colo. 1984); and 713 F.2d 1477 (10th Cir. 1983) (J. Holloway). An evidentiary hearing on standing was held on July 16-20, 1984.

a. My Role. I represented Boettcher & Company, which was one of the two principal defendants in this action. The other principal defendant was Shearson/American Express, Inc. I think it is fair to say that Boettcher took the lead role on discovery prior to the time that it settled, and Boettcher took the lead role on the evidentiary hearing and rulings on standing, capacity and real party in interest. 599 F. Supp. 224 (D. Colo. 1984). These issues were the subject of a five-day evidentiary hearing which was the equivalent of a bifurcated trial. The Shearson lawyers took the lead role on the motion to dismiss the federal commodities and securities claims. 590 F. Supp. 204 (D. Colo. 1984). After the rulings on standing and real party in interest, I turned the case over to another lawyer in my office, Richard P. Holme, and Boettcher settled the claims against it shortly thereafter.

b. Summary of Case. Tom Chilcott operated a ponzi scheme out of Fort Collins, Colorado, whereby he purported to invest his clients' money in the commodities futures market. He told many of his investors that they were investing through a fund that he called the Chilcott Futures Fund. Mr. Chilcott, in fact, did execute some trades on the commodities futures market through the brokerage houses of Boettcher & Company and Shearson/American Express. However, for the most part, he took money from his later investors and paid it directly to the earlier investors to create an illusion of successful investing. Eventually the F.B.I. shut him down; he pled guilty to several federal offenses; and he was sentenced to the federal penitentiary. When he was shut down, he owed between $50,000,000 and $70,000,000 to his investors. The Commodity Futures Trading Commission ("CFTC") appointed a receiver, Jim Johnson, to marshall Chilcott's assets, and one of the actions taken by the receiver was to initiate an action in the United States District Court for the District of Colorado against Boettcher, Shearson/American Express, and others. Civil Action 82-C-889 (J. Carrigan). The complaint alleged that Chilcott was the agent of Boettcher and Shearson, and that Boettcher and Shearson were accordingly liable for his theft. The complaint also alleged independent violations of law by Boettcher and Shearson, including claims of violations of the federal securities and commodities law and state law claims of fraud, conversion, negligence and breach of fiduciary duty.

Boettcher's first line of defense was to assert that the Chilcott Futures Fund was not a legal entity, and that the causes of action being asserted really belonged to the individual investors rather than to Chilcott

Futures Fund. Since the receiver was appointed only to represent the Chilcott Futures Fund, Boettcher asserted that he lacked standing and was not the real party in interest to raise the issues that were being raised in the litigation. Following a five-day evidentiary hearing on standing, Judge Carrigan ruled that the receiver did have standing to bring this action and that he was a real party in interest.

Eventually, Boettcher settled the claims against it, and the case has proceeded to trial against Shearson. In a bifurcated trial, Shearson was found liable to the receiver and the jury returned a verdict of compensatory and punitive damages totaling about $40,000,000.

c. Significance of the Case. The case was significant for several reasons. First and foremost, it asserted potential damages against Boettcher in the range of $50,000,000 to $70,000,000 and if Boettcher were ever held liable for damages in that amount it would have destroyed Boettcher and bankrupted many of its partners. Second, the case raised important issues of standing, capacity, and real party in interest, as well as important, and sometimes novel, issues on the merits of associated person liability and liability under the federal commodities and securities law.

d. Parties and Lawyers. Boettcher's in-house general counsel was John S. Lutz. His present address and telephone number are: John S. Lutz, Kelly, Stansfield & O'Donnell, 550 15th St., #900, Denver, CO 80202, (303) 825-3534. The lead lawyers for Shearson were Anthony F. Phillips and Francis J. Menton, Jr. of Willkie Farr & Gallagher, One Citicorp Center, 153 East 53rd St., New York, NY 10022, (212) 935-8000. The lead lawyer for the plaintiff was Kenneth C. Groves, 225 E. 16th Ave., #1000, Denver, CO 80203, (303) 861-1100.

5. Ideal Basic Industries v. Commissioner of Internal Revenue, 82 T.C. 352 (U.S. Tax Court, Feb. 29, 1984) (J. Goffe). Trial was February 23-26, 1981.

a. My Role. The early stages of this case were handled by Mr. Howard Rea, who was the senior tax partner at my firm. My initial role was to provide him with litigation assistance. However, Mr. Rea became ill with cancer and I became the lead lawyer on the case. I was responsible for the trial and the subsequent briefing of the legal issues for the court. Mr. Rea died shortly after the trial.

b. Summary of Case. Potash Company of America (PCA), a division of Ideal Basic Industries, mined and concentrated sylvinite ore to produce five grades of potassium chloride or muriate of potash which it sold primarily for use as an agricultural fertilizer. The IRS contended that certain of PCA's concentration and related processes (such as leaching, crystallization, storage and loading) constituted manufacturing processes, rather than mining processes, and accordingly were not eligible for inclusion in PCA's computation of depletion allowance. Subsidiary issues included whether PCA could use representative market or field price to compute gross income from mining or whether it must use the proportional profits method of calculation; whether standard muriate was of like grade and kind as other muriate; and how transportation costs and the cost of leasing railroad cars should be treated. The IRS alleged a deficiency for the tax years under audit (1971-1974) of $2,136,123. However, the resolution of these issues had a substantial tax impact on other years as well.

Following trial during February 23-26, 1981, and extensive subsequent briefing of the legal issues, the U.S. Tax Court ruled in favor of PCA on essentially all of the major issues. The IRS chose not to appeal the rulings of the Tax Court.

c. Significance of the Case. This case was significant because it resolved novel issues of what constituted mining processes for a category of minerals known as "D" minerals (IRC § 613(c)(4)D). Leaching, crystallization, storage, loading and transportation are all common processes applied to D minerals, and thus this decision has had a substantial impact upon many companies in a variety of mining industries.

d. Other Counsel. The in-house general counsel for Ideal Basic Industries was Robert J. Moir. His present address and telephone number are P. O. Box 8789, Denver, CO 80201, (303) 623-5661. Co-counsel for Ideal Basic Industries, who handled an unrelated issue in the case regarding whether the interest expense deduction can be reduced by interest income, was Mr. Claude M. Maer, Jr. His address and telephone number are as follows: 303 E. 17th Ave., #1100, Denver, CO 80203, (303) 861-0600. Counsel for the IRS was John D. Moats. His address and telephone number are 155 S. Madison St., #209, Denver, CO 80209, (303) 320-1250.

6. Rawson v. Sears, Roebuck & Co., 822 F.2d 908 (10th Cir. 1987) (J. Anderson). Argued September 8, 1986.

a. My Role. In this case I was engaged as appellate counsel only. Mr. Rawson, the plaintiff below, was represented at the trial by James A. Carleo, a Colorado Springs lawyer. Following a verdict and judgment in favor of Mr. Rawson in an amount of approximately $19,000,000, the defendant, Sears, Roebuck & Co., appealed to the Tenth Circuit Court of Appeals. I was engaged to represent Mr. Rawson on appeal.

b. Summary of Case. Sears, Roebuck & Co. fired one of its store managers, Mr. Gary Rawson, after Mr. Rawson had been with Sears for 33 years and had reached the age of 59 years. Sears claimed that it fired Rawson because of his improper accounting of inventory at his Pueblo store, and because of alleged bad morale at his Pueblo store and certain self-dealings with Sears' inventory and services. Rawson claimed that he was fired as a result of age discrimination. The firing was publicized by Sears and it caused Rawson utter humiliation and depression, leading to contemplated suicide. Rawson filed suit against Sears in the state court, and Sears removed it to the United States District Court for the District of Colorado (J. Kane). The suit alleged, inter alia, a violation of the Colorado age discrimination statute, C.R.S. § 8-2-116, and ultimately that became the only cause of action that was submitted to the jury. In a bifurcated trial, the jury first found Sears guilty of age discrimination and then awarded Rawson approximately $6,000,000 in compensatory damages, and $10,000,000 for punitive damages. The judgment also included approximately $3,000,000 in prejudgment interest.

The primary issue raised on appeal was whether there was a private cause of action, either expressed or implied, under the Colorado age discrimination statute. Secondary issues included a statute of limitations defense; the collateral estoppel or res judicata effect of a ruling of the Colorado Industrial Commission; whether an employer can assert additional grounds for discharge that were not relied upon at the time of the firing; whether the compensatory and punitive damages were reasonable and supportable; and various other evidentiary issues.

On June 10, 1987, the Tenth Circuit reversed the judgment below on the grounds that there was no express or implied private cause of action under the Colorado age discrimination statute. Accordingly, it did not address the other issues on appeal. The opinion of the Tenth Circuit was written by Judge Anderson and joined by Judge Bohanon, a District Judge sitting by designation. Judge McKay filed a dissent.

c. Significance of the Case. The significance of this case is that the court declined to find either an express or implied private cause of action under the Colorado age discrimination statute and that the Tenth Circuit was unwilling to grant deference to the District Court's interpretation of Colorado law because of a conflict among several of the District Court Judges for the District of Colorado on this issue. Because of the size of the judgment below, the Tenth Circuit decision was obviously also very important to the parties.

d. Other Counsel. Mr. Rawson's trial counsel was James A. Carleo, 620 So. Cascade, Colorado Springs, CO 80903, (303) 630-7883. Counsel for Sears, Roebuck & Co. was Gregory A. Eurich of Holland & Hart, 555 17th St., Suite 2900, Denver, CO 80202, (303) 295-8166, and Charles G. Bakaly, Jr. of the firm of O'Melveny & Myers, 400 So. Hope St., 15th Floor, Los Angeles, CA 90071, (213) 669-6000.

7. Prescott v. Burlington Northern Railroad Company, Colorado Court of Appeals No. 85-CA-0522.

a. My Role. I was engaged solely as appellate counsel to represent the Burlington Northern Railroad Company. The Burlington Northern Railroad Company was defended at the trial in the District Court for Boulder County, Colorado, by its in-house counsel, Mr. C. William Kraft III and Mr. James P. Gatlin. Following a jury verdict and judgment against it of approximately $23,000,000, the Burlington Northern appealed to the Colorado Court of Appeals, and I was engaged to represent the Burlington Northern on the appeal.

b. Summary of Case. The case arose out of a collision at a railroad crossing in Longmont, Colorado, between a Burlington Northern Railroad train and an automobile driven by Jana Prescott, with her sister, Susan, as a passenger. Both Jana and Susan received serious injuries. The case was tried in December, 1984 before a jury in the District Court for the Twentieth Judicial District in Boulder, Colorado. The jury returned a verdict of $5,000,000 in actual damages and $18,000,000 in punitive damages, which is believed to be the largest punitive damage award ever entered in Colorado.

The appeal raised the following issues: (1) was it error to fail to instruct that a motorist has a duty to look, listen and stop if necessary when approaching a crossing, (2) was it error to admit evidence of a subsequent remedial measure on behalf of the Burlington Northern in reducing speeds of its trains through that intersection after the accident, (3) was the $18,000,000 punitive damage award excessive and the result of jury passion and prejudice, (4) was it error to accrue prejudgment interest on the punitive damage award, and (5) were various other evidentiary and discretionary rulings in error?

After the case was fully briefed for the Court of Appeals, but before it was to be argued on appeal, the parties determined that they should make a serious effort to settle the case. They both agreed on the need to obtain a neutral evaluation of the strength of the appeal. Accordingly, the parties selected an advisory appellate panel of distinguished Denver lawyers to hear a mock appeal of the case. The panel consisted of Philip G. Dufford, a former judge on the Colorado Court of Appeals; William C. McClearn, a past President of the Colorado Bar Association; and Edwin S. Kahn, a highly respected trial lawyer. Both sides submitted their full appellate briefs to this advisory panel and, on March 3, 1987, gave a full appellate oral argument. The parties personally were present during this presentation. Following argument, the panel deliberated and then returned its advisory opinion, which addressed and evaluated each of the issues raised.

Based upon that evaluation, the parties ultimately were able to settle the case before it was heard by the Colorado Court of Appeals.

c. Significance of the Case. Certainly one of the significant things about this case was the procedure used to settle the dispute. I believe deeply that lawyers and their clients must develop new and more effective techniques for settling a greater portion of the cases that now clog the courts, and this particular case demonstrated a successful technique to settle a very difficult case.

The two most significant substantive issues raised in the appeal, were (1) whether a motorist in Colorado has a duty to stop, look and listen when approaching a railroad crossing, and (2) whether Colorado Rules of Evidence 407 was violated when the court admitted testimony that the Railroad reduced the speed of its trains through the subject intersection after the accident. The first of those issues is important because of the continuing number of railroad/car collisions in Colorado and elsewhere. There were several Colorado cases that were decided around the turn of the century that established such a duty for motorists, and the issue on appeal was whether those precedents are still good law today. The issue of the admission of post-remedial actions under Rule 407 of the Colorado Rules of Evidence is important because the trial court established an exception to Rule 407 that allowed the admission of evidence of post-remedial actions for the purpose of rebutting a claim that the plaintiff was contributorily negligent. It was the Railroad's argument that such an exception would largely negate the important social policy behind Rule 407.

d. Other Counsel. The Burlington Northern's trial counsel were C. William Kraft III and James P. Gatlin. Their address and telephone number is as follows: 1401 17th Street, #510, Denver, CO 80202, (303) 295-7717. Counsel for the plaintiffs were Robert A. Schuetze and John A. Purvis of the firm of Buchanan, Gray, Purvis & Schuetze, 1050 Walnut, Suite 501, Boulder, CO 80302, (303) 442-3366.

8. Wylie v. The Marley Company, No. 85-2368, Tenth Circuit Court of Appeals (Presently Awaiting Decision).

a. My Role. This is another case in which I was engaged as appellate counsel for the appeal to the Tenth Circuit. My client, The Marley Company, was the defendant in the trial court and it is the appellant in the Tenth Circuit.

b. Summary of Case. This case involves a claim by Donald J. Wylie that his employer, The Marley Company, breached his employment contract when it terminated his employment. Marley contends that Wylie resigned.

Wylie had been the Executive Vice President of The Marley Company when a conflict arose between him and The Marley Company as a result of the promotion of a second person to the title of Executive Vice President. According to The Marley Corporation, Wylie announced to its President that he could no longer remain in the employment of The Marley Company if he had to share the title of Executive Vice President with another person. Then, in subsequent conversations, Wylie told the general counsel of The Marley Company and the Chairman of the Board of The Marley Company that he had resigned. Several days later, Wylie denied that he had resigned, and he demanded that The Marley Company continue to honor his 10-year employment contract at a salary level of approximately $220,000 per year. The Marley Company refused this request.

Wylie brought suit in the United States District Court for the District of Kansas (J. Saffels) based upon diversity of citizenship. At the trial, the judge instructed the jury that Wylie had not resigned because, under Kansas law as interpreted by the judge, an officer of a corporation can only resign in writing, and it was undisputed that Wylie had never submitted a written resignation. Kan. Stat. Ann. § 17-6302, upon which Judge Saffels relied in making that ruling, reads as follows, "[A]ny officer may resign at any time upon written notice to the corporation." [Emphasis added.] The jury returned a verdict for Wylie in the amount of $1,329,424, and judgment was entered upon that amount plus prejudgment interest of another $341,000.

Marley appealed to the Tenth Circuit Court of Appeals. The case has been briefed and oral argument was held on September 29, 1987, before a panel consisting of Chief Judge Holloway, Judge McKay and District Judge Burciaga (sitting by designation). The case is presently awaiting decision.

The primary issue raised in the case on appeal is whether the statutory language quoted above is mandatory or permissive in specifying how an officer of a corporation may resign. A second issue raised on appeal is an attorney-client privilege issue. The trial court had precluded testimony of

Wylie's admission to Marley's in-house general counsel that he had resigned because Marley's counsel had previously represented Wylie when the employment contract was entered into several years earlier. The court held that the earlier attorney-client relationship carried over to the later communication. Marley, on the other hand, argued that the attorney-client privilege could not protect communications between Wylie and Marley's in-house general counsel at a time when Wylie clearly understood that he was communicating with the general counsel of his adversary. Other asserted errors involve the failure to instruct on waiver and quasi-estoppel and the manner in which prejudgment interest was calculated.

c. Significance of the Case. The statutory construction issue is quite significant because a number of other states, including Delaware, have the same statutory provision. Beyond that, if the District Court's ruling is upheld that the word "may" is mandatory and exclusive, it will have a significant impact upon the rules of statutory construction generally.

The attorney-client issue is also significant because it will represent a significant departure from traditional rules of privileged communications if a communication with the known counsel of the declarer's adversary can be regarded as a confidential communication.

d. Other Counsel. In-house counsel for The Marley Company were Robert F. Wrobel and Timothy J. Verhagen, The Marley Company, 1900 Johnson Drive, Mission Woods, KS 66205, (913) 362-5440. Marley's trial counsel, Roger Stanton of the firm of Stinson, Mag & Fizzell, 7500 West 110th Street, Overland Park, KS 66210, (913) 451-8600, also appeared on the brief. Counsel for Donald J. Wylie was David A. Welte of the firm of Polsinelli, White & Vardeman, 4705 Central, Kansas City, MO 64112, (816) 931-3353.

9. Stephens Industries, Inc., et al. v. Haskins and Sells, et al., Civil Action D-771, U.S. District Court for the District of Colorado (J. Doyle)

(Trial to a jury during December 22-29, 1969), aff'd. 438 F.2d 357 (10th Cir. 1971) (J. Hill, Breitenstein and Seth).

a. My Role. I was trial counsel for all defendants, consisting of Haskins and Sells and three of its partners and associates. Following a verdict and judgment for the defendants, the plaintiffs appealed the case to the Tenth Circuit, and I represented the appellees in the Tenth Circuit.

b. Summary of Case. Plaintiffs purchased two small rental car companies located in Denver, Colorado ("Rent-A-Car Companies"). In order to establish the purchase price, the Rent-A-Car Companies employed Haskins and Sells to prepare a balance sheet. The purchase agreement between the Rent-A-Car Companies and the new buyer provided that the accounts receivable were not to be audited, but rather were to be entered on the balance sheet as shown on the records of the company. The Rent-A-Car Companies advised Haskins and Sells of this provision, and requested that it not audit the accounts receivable figures. During the course of preparing the balance sheet, Haskins and Sells discovered that the accounts receivable figure was not reliable. However, pursuant to instructions from its client, the Rent-A-Car Companies, Haskins and Sells did not adjust that figure. Its opinion, accompanying the balance sheet, stated that the accounts receivable figure was not audited, but it did not state that Haskins and Sells had obtained information that the accounts receivable figure was not reliable.

After the purchasers acquired the Rent-A-Car Companies, they were unable to collect a substantial portion of the accounts receivable. Ultimately, they sued Haskins and Sells, alleging that Haskins and Sells was negligent, grossly negligent and fraudulent in failing to disclose to the purchaser information it had acquired concerning the inadequacies of the accounts receivable figures, even though that figure was not to be audited. The plaintiffs sought damages of approximately $218,000.

The case was tried before a jury, with Judge Doyle presiding, from December 22 through December 29, 1969. The court ruled that the theory of negligence could not be submitted to the jury because there was no privity between Haskins and Sells and the purchaser. The jury returned a defense verdict for Haskins and Sells.

Plaintiffs then appealed to the Tenth Circuit Court of Appeals. The primary issue on appeal was whether, under Colorado law, an accountant could be liable on a theory of simple negligence to a third party with whom it had no privity. Other issues involved the adequacy of the instructions on misrepresentation by nondisclosure, the measure of damages, and whether there should have been a directed verdict. On March 11, 1971, the Tenth Circuit affirmed the judgment below in a unanimous opinion written by Judge Hill and joined by Judge Breitenstein and Judge Seth.

c. Significance of the Case. The greatest significance of this case to me was the fact that we obtained a defense verdict on the issue of fraud. The three individual defendants were all fine, upstanding certified public accountants, and had there been a finding that they had defrauded the plaintiffs, that very likely could have ended their careers. The legal issue of greatest significance was the holding that, under Colorado law, an accountant is not liable on a theory of simple negligence to a third party with whom he has no privity. There is a split of authority on that issue, and it was significant that both the District Court and the Court of Appeals determined that Colorado law required such privity.

d. Other Counsel. Haskins and Sells' New York counsel, Michael Cooper of the firm of Sullivan & Cromwell, 125 Broad Street, New York, NY 10004, (212) 558-4000, appeared of counsel for Haskins and Sells on the briefs. Counsel for the plaintiffs were William L. Bromberg, 1380 Lawrence, #1250, Denver, CO 80204, (303) 893-3800, and Richard A. Miller, 601 Locust St., #1100, Des Moines, IA 50309, (515) 283-2076.

10. Hubbard v. General Motors Corporation, Civil Action 77-W-878, U.S. District Court for the District of Colorado (J. Winner). Trial to a jury, June 9-19, 1980.

    a. My Role. I represented the defendant, General Motors Corporation, in this product liability action.

    b. Summary of Case. June Hubbard suffered a broken back when the front axel housing of her 1974 Chevrolet Blazer automobile broke while she was riding in the Blazer as it was being driven down a dirt road. She and her husband sued General Motors on the theory of strict product liability, alleging that the axel housing was defective.

       Following trial, the jury returned a defense verdict for General Motors Corporation on June 19, 1980. The plaintiffs chose not to appeal.

    c. Significance of the Case. As in all product liability cases where personal injuries result, the case had considerable significance for both sides. The plaintiffs were genuinely injured and they were seeking compensation if they could show that the automobile was defective. From the defendant's point of view, the case was significant because, if the front axel of the 1974 Blazer had been found to be unreasonably defective, that could have had a serious collateral estoppel effect upon it in other cases.

       There were also several legal issues of significance raised in the case, including the court's instruction on the affirmative defenses of assumption of risk and product misuse, and evidentiary rulings on the admissibility of demonstration tests.

    d. Other Counsel. Counsel for plaintiffs was George Dilts and Guy Dyer of the firm of Dilts, Dyer, Fossum & Hatter, 140 West First Street, Cortez, CO 81321, (303) 565-8581.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant

litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In addition to the matters listed in response to question 18, I have handled a number of other significant matters that did not result in a final verdict or judgment on the merits.

(a) General Atomic Company. I represented the contractor that built the Fort St. Vrain nuclear power plant in litigation against a subcontractor and in threatened litigation with Public Service Company of Colorado, the owner. The Fort St. Vrain plant was a novel design, involving a high-temperature, gas-cooled reactor, which is unique in the United States. General Atomic had given very strong performance warranties that were not being met. Resolution of the many disputes with the owner and the subcontractors occupied my time on a nearly exclusive basis for almost three years. The issues involved claims well in excess of $100,000,000 and they presented an incredibly complex array of technical nuclear and engineering issues, licensing and regulatory issues, and basic contract issues. I was the chief outside counsel for General Atomic in these disputes, and it was satisfying ultimately to have been able to resolve these disputes by agreement. Interestingly, this is another case where I used the technique of staging a mini-mock trial before the chief executive officers of both parties in order to give them a perspective of how the issues might look in an adversary proceeding.

(b) Burlington Northern Railroad Company. I was chief trial counsel for the Burlington Northern Railroad in a major securities action that challenged the merger of the Burlington Northern Railroad and the Colorado and Southern Railroad. Koch, et al. v. Colorado & Southern Railway Company and Burlington Northern Railroad Company, Civil Action 81-C-1800, U. S. District Court for the District of Colorado. That case was brought as a class action and it raised substantial securities and valuation issues. We were able successfully to settle that case shortly before trial when the court (J. Carrigan) ultimately decided not to certify the case as a class action.

(c) E. Doyle Huckabay, Trustee, and E. Doyle Huckabay, Ltd. v. W. R. Grace & Co., Civil Action 75-F-979, U. S. District Court for the District of Colorado. W. R. Grace was preparing to develop a very large strip mine for coal pursuant to a federal coal lease when it was sued by an oil exploration company that had a federal oil lease overlapping the coal lease. The proposed oil wells would have been inconsistent with the proposed coal mine because of the need to leave platforms of undisturbed earth throughout the strip mine in order to support the oil wells. At risk was the development of coal rights valued in excess of $2,000,000,000. I represented W. R. Grace in what was to become one of the first disputes to determine priorities between conflicting federal coal rights and federal oil rights. This issue was just beginning to be raised with the development of western coal fields because the occurrence of coal deposits overlaying oil fields is more prevalent in the west than in the east. The issue was of concern to the Department of the Interior, and we met with representatives of the Department of the Interior in an attempt to work out a policy that would harmonize the two conflicting interests. Shortly before trial we developed a compromise that required the oil developer to drill his wells from locations that minimized their impact upon coal development, and the case was settled. The case raised important issues, not only of priorities between federal oil and coal rights, but also of the right to lateral support, right of implied access to a mineral estate, and surface rights, all of which raised novel and difficult issues of great importance to the oil and gas and coal industries.

Bar Association activity that has been significant has included my work in developing alternative forms of dispute resolution and in providing legal services to the poor. With regard to developing alternative forms of dispute resolution, I was the initial chairman of the Colorado Bar Association Committee on Alternatives to Adversary Dispute Resolution back in 1977. I obtained funding grants to develop a mediation project for resolving child custody disputes; a mediation project for landlord-tenant disputes; and an arbitration project for resolution of the backlog of civil rights disputes. Later, I became chairman of the American Bar Association Litigation Section Committee on Litigation Management and Economics where I helped establish pilot programs in a number of states to establish pilot programs in a number of states to promote alternative forms of dispute resolution. I used a portion of my sabbatical time from my law firm to work on this project.

As chairman of the Denver Bar Association Committee on Legal Services to the Poor in approximately 1968-69, I helped administer a program that provided legal services on a volunteer basis to indigent people with legal problems.

Of course, my year clerking for Mr. Justice White at the United States Supreme Court in 1965-66 ranks near the top of my list of significant legal activities. Undoubtedly, my interest in becoming a federal judge was whetted by that experience.

Like any other lawyer who has practiced for more than 20 years, I could go on for a long time about significant legal matters in which I have been involved. I have, through criminal appointments, defended people accused of criminal conduct and I have represented indigent parties in civil disputes on a pro bono basis. I have handled substantial antitrust and securities cases, and have defended a law firm that was charged with malpractice. I have served as acting in-house general counsel for a publicly-traded cad-cam computer company for almost one full year, and played cameo roles in the Pennzoil v. Texaco case, where I assisted in the representation of Pennzoil on one of its appeals to the Tenth Circuit, and in the University of Oklahoma v. NCAA case, where I represented the NCAA in the remedy phase of its antitrust litigation with the University of Oklahoma and the University of Georgia. I have enjoyed teaching law at the University of Denver Law School, prosecuting municipal offenses for the Town of Bow Mar, handling annexation disputes, and a myriad of other legal tasks. They all have been significant--at least to the parties involved. I would try never to forget that lesson if I am fortunate enough to become a federal judge.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

Davis, Graham & Stubbs. Upon resigning, I would have three continuing financial interests in Davis, Graham & Stubbs, which could be liquidated in the following ways:

(a) Pro rata share of firm income for the calendar year of resignation. I would be entitled to a sum of money equal to (1) the total partnership net income earned during the calendar year of my resignation (2) multiplied by my partnership percentage and (3) further multiplied by the percentage of the year that I was a partner, (4) less the amount of money previously paid to me during the year in the form of monthly draws or special distributions. It normally takes one month following the close of a calendar year to complete the calculations necessary to determine net income for the year. Thus, if I resigned from the firm during 1988, my share of the 1988 firm income would be calculated and paid to me on January 31, 1989. During this time, and undoubtedly for some longer period of time, I would excuse myself from any matter in which my firm appeared as counsel or in which it has any other involvement. If necessary, I believe I could negotiate a fixed sum settlement amount with my firm at the time of my resignation, which could be reduced to a note and paid to me over a fairly short time period, such as 3-6 months. I suspect that an immediate payment could be negotiated if that is required.

(b) Capital Account. Ordinarily, the firm would pay back my capital account, which is approximately $69,000, over a three to six-month period following my resignation. The amount would be evidenced by a promissory note until paid.

That, too, could probably be negotiated for immediate payment if that is required.

(c) Retirement Account. The firm sponsors a Keogh Plan which is largely self-funded by the partners. My retirement account is presently valued at approximately $115,000. Contributions are made as of June 30 and December 31 of each year. Following resignation, the retirement account has to be valued as of the prior valuation date, which will be either June 30 or December 31. After the valuation has been completed, I can withdraw my entire account and invest it in an individual IRA account. This process ordinarily takes about nine months. My retirement account would not be affected by anything that happened to Davis, Graham & Stubbs after my resignation. Again, this process could probably be accelerated if necessary.

Inantea Associates III, Inantea Associates IV and Cobblers Investments 1982. These are all passive investment partnerships in which I have very small amounts invested (several thousand dollars or less). Cobblers 1982 is scheduled to be liquidated during 1987, so it should present no problem. I am sure I can have my interest valued and sold to one of the other partners.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I will, for at least one year, excuse myself from any case in which Davis, Graham & Stubbs appears as counsel or has any other involvement, and I will excuse myself for at least several years from any case involving any company that has been a significant client of mine in the past. My practice has been so diverse that I do not anticipate that any particular category of litigation will present a conflict. My outside investments are fairly modest, but I will strive to simplify those investments so as to minimize the possibility that any financial conflict of interest will arise. I would excuse myself from any case at any time where a conflict of interest, or an appearance of conflict, arises.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No, except that I would like to continue teaching occasionally at Denver University Law School as an adjunct professor if possible. I could teach at night and I expect I would limit my teaching to one course for one quarter each year. My compensation for this would be approximately $875 per course. The primary reason I would like to continue teaching is that I believe it is important for judges to resist isolation, and I think I could provide benefits to the legal profession if I could teach occasionally. However, I certainly would not teach if it creates any conflicts.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

1986

Davis, Graham & Stubbs	
Partnership income	$204,825
Interest on Capital Account	3,756
Inantea Associates IV	1,701
Colorado National Bank	85
Janus Fund, Inc.	1,528
Estate of Louise Ebel	
Inheritance under the Will of my deceased aunt, Louise Ebel	39,318

1987

Davis, Graham & Stubbs (through November) (Partnership draw and special distributions)	$113,500
University of Denver Law School (Salary for teaching the Corporations Law course for one quarter)	875

(I can supplement this information after year end if required.)

5. **Please complete the attached financial net worth statement in detail. (Add schedules as called for.)**

See Financial Statement and schedules attached.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

I have never played any material role in any campaign other than as Republican precinct committeeman. I was a member of a steering committee to support Mike Massey for Congress in approximately 1981. However, my actual role was very limited and he ultimately was not successful in seeking the Republican nomination for a newly created Congressional seat.

I was also on the Colorado steering committee for Bob Dole for President this year. Shortly after I joined that committee, the possibility of this judicial nomination came along and so I have resigned and become inactive in that campaign as well.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

   I have been chairman of the Denver Bar Association Committee on Legal Services to the Poor, which organized hundreds of Denver lawyers to donate their time to provide free legal services for the poor. I donated my own time pursuant to this program for many years. I have accepted a number of criminal appointments from the United States District Court for the District of Colorado, the Tenth Circuit Court of Appeals, and even from the United States Supreme Court, to represent indigent criminal defendants without pay or with only nominal pay. In addition, I regularly provide free legal services to members of my church and to other people who need my services and who cannot pay. In the earlier years of my practice, I had years where I devoted probably 10% of my time to serving the disadvantaged. In more recent years, I have been involved in other pro bono activities and so have contributed much less time to serving the disadvantaged.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership, what you have done to try to change these policies?**

   I do not belong, and have never belonged, to any organization that discriminates on the basis of race or religion. With regard to sex discrimination, I do not know whether my college fraternity, Kappa Sigma, has admitted women or not. I have not been active in my fraternity since 1962 when I graduated from college. The Denver Law Club did not have any women members for a long time, but about ten years ago another member and I nominated the first two women candidates. They were elected into membership, and the Denver Law Club has, since then, accepted a number of women members.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Yes. Senator Armstrong established such a Committee headed by Ted Halaby, a Denver lawyer. That Committee requested that I submit a formal application for nomination to the Tenth Circuit Court of Appeals, which I did. I was then interviewed by the Committee. Several weeks later, Senator Armstrong called to advise me that the Committee had recommended that I be nominated, and that he was going to recommend my name to the Justice Department. Shortly thereafter, I was called back to the Justice Department for one day of interviews. Several weeks later, I was advised by the Justice Department that it had initiated investigations into my background by the FBI and the ABA Standing Committee on Federal Judiciary, and I subsequently met with FBI agents and a representative of the ABA Committee. On December 17, 1987, I received a call from President Reagan advising me that he was going to submit my nomination to the United States Senate.

Almost two years earlier, I had been interviewed by Senator Armstrong and the Justice Department for possible nomination to either the United States District Court or to the Tenth Circuit Court of Appeals. As a result of those interviews, I was offered the opportunity to be considered further for possible nomination to the United States District Court, but I declined after concluding that I would be better suited for the Tenth Circuit Court of Appeals. I had assumed that the opening on the Tenth Circuit Court of Appeals would be filled by another nominee until I got the invitation from Ted Halaby that is referred to above.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances**

concerning your position on such case, issue, or question? If so, please explain fully.

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

- **a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- **b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- **c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- **d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- **e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

It is impossible to address the stated criticisms of judicial activism in the abstract or as absolute propositions. Each case must be addressed on its own merits within the context that it is presented to the court.

However, it is generally my view that the role of the courts is to resolve specific grievances between specific litigants. Although the resolution of one dispute will inevitably have a precedential effect upon the resolution of similar disputes in the future, I believe that precedent should evolve at a measured and cautious pace. Thus, each case should be decided on the narrowest ground possible, consistent with the administration of justice in the particular case under consideration.

I also believe that no judge should impose his own particular values or political views on the litigants or on society in general. Everyone is entitled to a fair, impartial trial untainted by a judge's individual biases. The right and obligation to establish political agendas and public policy in our country should rest with the executive and legislative branches, which are accountable to the people through the electoral process. The role of the courts should be limited to interpreting the laws as faithfully and impartially as possible and to ensuring that each litigant's basic constitutional rights are preserved.

Standing and ripeness are important legal concepts that are necessary to provide restraints on the courts and to guarantee that issues are raised only by litigants who have a genuine and bona fide interest in the controversy.

In my opinion, courts are generally poorly equipped to provide oversight responsibilities. Further, excessive and continuing administrative oversight may compromise the objectivity and neutrality of the court, and may embroil the court in a function that is basically nonjudicial in nature.

I come back to my central premise of the role of the court. The courts are there to resolve disputes, to interpret laws as faithfully as possible, and to protect each person's constitutional rights. Judges, however, are servants of the people, and not their masters. The highest calling of the judiciary is to be scrupulously honest, fair, courageous when required to protect Constitutional rights, yet modest and restrained. These are the values that I would strive to bring to the court if I am confirmed to the Tenth Circuit Court of Appeals.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	10,000		
U.S. Government securities—add schedule U.S.Savings Bonds	250		
Listed securities—add schedule	60,850		
Unlisted securities—add schedule	1,700		
Accounts and notes receivable:			
Due from relatives and friends			
Due from others			
Doubtful			
Real estate owned—add schedule	400,000		
Real estate mortgages receivable			
Autos and other personal property	60,000		
Cash value—life insurance	11,000		
Other assets—itemize:			
Est., Unpaid 1987 income from law firm	90,000		
Law firm Capital acct.	69,000		
Law firm Retirement acct.	115,000		
Total assets	817,300		

LIABILITIES			
Notes payable to banks—secured			
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due	1,000		
Unpaid income tax	40,000		
Other unpaid tax and interest			
Real estate mortgages payable—add schedule	66,000		
Chattel mortgages and other liens payable			
Other debts—itemize:			
Total liabilities	107,000		
Net worth	710,800		
Total liabilities and net worth	817,300		

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	No		
On leases or contracts	No		
Legal Claims	No		
Provision for Federal Income Tax	No		
Other special debt *	No		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	No		
Are you defendant in any suits or legal actions?	No		
Have you ever taken bankruptcy?	No		

* As a partner in my law firm, I am contingently liable for all law firm obligations. Pursuant to the partnership agreement, I will be removed from such obligations to the firm upon resignation, although I may remain contingently liable to third parties.

Listed Securities Schedule

Janus Fund, Inc.	$44,319
Fidelity Select Energy Fund	2,350
Kemper Money Market Fund	6,744
Merrill Lynch Corporate Income Fund No. 95 MPS	1,444
Merrill Lynch Corporate Fund Accumulation Program, Inc.	3,076
American Tel. & Tel. (11 shares)	297
Tosco Corp. (177 shares)	265
Public Service Company of Indiana (144 shares)	1,692
Lubrizol Corp. (9 shares)	272
Honda Motor, Inc. (4 shares)	391
Primo Incorporated (100 shares)	0
	$60,850

Unlisted Securities Schedule

Inantea Associates III	500
Inantea Associates IV	200
Cobblers Investments 1982	1,000
	$ 1,700

Real Estate Mortgages Payable Schedule

Colorado National Mortgage Company: First Mortgage on my residence	$66,000

AMERICAN BAR ASSOCIATION
Standing Committee on
Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS
LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

December 30, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: DAVID M. EBEL
United States Court of Appeals
for the Tenth Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of David M. Ebel for appointment as Judge of the United States Court of Appeals for the Tenth Circuit.

A substantial majority of our Committee is of the opinion that Mr. Ebel is "Well Qualified" for this appointment. The minority found him Exceptionally Well Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

LOWELL A. REED

Birth:	June 21, 1930	West Chester, Pennsylvania
Legal Residence:	Pennsylvania	
Marital Status:	Married	Diane D. Benson Reed 4 children
Education:	1947	Fullerton Junior College
	1948 - 1952	University of Wisconsin B.B.A.
	1951 - 1952	University of Wisconsin School of Law
	1956 - 1957	George Washington School of Law (evening)
	1957 - 1958	Temple University School of Law J.D. degree
Bar:	1959	Pennsylvania
Military Service:	1952 - 1957	United States Navy
Experience:	1958	Law Clerk to Hon. Ethan Allen Doty Court of Common Pleas Philadelphia County
	1958 - 1963	PMA Insurance Company Staff Trial Counsel
	1963 - present	Rawle & Henderson Associate, 1963-1966 Partner, 1966-present
	1980	Special Counsel to Senate of Pennsylvania Labor & Industry Committee
	1980 - present	Member, Pennsylvania Secretary of Labor and Industry Committee for Referees' Rules and Procedures
Office:	211 South Broad Street Philadelphia, Pennsylvania 19107 215 875-4091	
Home:	1056 Huntingdon Road Abington, Pennsylvania 19001	

To be U. S. District Judge for the Eastern District of Pennsylvania

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

LOWELL A. REED, JR., NOMINEE

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

III. GENERAL (PUBLIC)

Philadelphia, Pennsylvania
January 11, 1988

LIST OF EXHIBITS

Page

1. *United States Review*; author, "Digest of Pennsylvania Workmen's Compensation and Occupational Disease Law" (sample). 4

2. *Pennsylvania Bar Institute*; Author, Pennsylvania Workers' Compensation Manual 1985 4

3. *Pennsylvania Lung Association, Pennsylvania Thoracic Society, and the Hahnemann Medical College and Hospital*; author of "Pneumonconiosis and the Pennsylvania Law" published in Joint Symposium on Coal Worker's Pneumonconiosis, March 30, 1978. 5

4. Memorandum Opinion, *Amoco Trinidad Oil Co. v. Royal Insurance Company, Limited*, July 9, 1976 16

5. Consent Order, *Raymond J. Donovan v. Lawrence Smith et al.*, U.S.D.C. E.D. Pa., Civil Action No. 82-1325. 18

6. Pennsylvania Bar Association endorsement and materials related to 1981 appointment to Commonwealth Court of Pennsylvania 19

7. Financial Disclosure Report, Ethics in Government Act of 1978, as of December 21, 1987. 21

8. Financial Statement, Net Worth, November 1987. 22

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Answer: Lowell A. Reed, Jr.

2. Address: Last current place of residence and office address(es).

Answer: Home: 1056 Huntingdon Road, Abington, PA 19001.

Office: 211 South Broad Street, Philadelphia, PA 19107.

3. Date and place of birth.

Answer: Born June 21, 1930, West Chester, PA, U.S.A.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Answer: Diane Benson Reed. Mrs. Reed is a homemaker.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Answer:

Fullerton Junior College, Fullerton, CA, Fall Semester 1947 (left to return to Wisconsin)

University of Wisconsin, Madison, WI, 1948-1952, Bachelor of Business Administration

University of Wisconsin School of Law, Madison, WI, 1951-1952 (left in 1952 to join the Navy - Korean War)

George Washington University School of Law, (evening classes) Washington, DC, 1956-1957 (left when released from Navy)

Temple University School of Law, Philadelphia, PA, 1957-1958; Juris Doctor

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, including firms, with which you were

connected as an officer, director, partner, proprietor, or employee since graduation from college.

Answer:

From	To	Employer	Type of Work
1/63	Date	Rawle & Henderson	Trial Lawyer
1/66	5/82	Temple Univ. Law School	Lecturer (part-time)
11/58	12/62	Penna. Mfr. Assn. Insurance Co.	Trial Lawyer
8/58	10/58	Judge Ethan Allen Doty	Law Clerk
6/57	7/58	Temple Univ. Development Office	Clerk/Analyst
9/52	5/57	Active Duty, U.S. Naval Reserve	Intelligence Naval Officer

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Answer: Yes. Active duty, U.S. Naval Reserve, 1952 to 1957, released from active duty honorably with rank of Lieutenant, File No. 567456; retired as Lieutenant Commander, 1970.

Chosen Battalion Adjutant, Officer Candidate School, Newport, RI, 1953; U.S. Naval Intelligence School, Anacostia Naval Receiving Station, Washington, DC, 1953; Naval Intelligence Officer and Agent, Office of Naval Intelligence, Philippines and Hong Kong, B.C.C., 1954 to 1956; Naval Intelligence Officer, Potomac River Naval Command, Washington, DC, 1956-1957.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Answer:

American Spirit Honor Medal, U.S. Naval Training Command, Great Lakes, Illinois, 1952, first in the class; Law Academy of Philadelphia Prize, 1958, as graduating senior. Founding member and chairman of Abington Blue Ribbon Committee to select School Board Candidates. Special Counsel to Senate of Pennsylvania Labor and Industry Committee, 1980. Member, Pennsylvania Secretary of Labor and Industry Committee for Referees' Rules and Procedures. (Rules published 11 Pa. Bulletin, No. 21, May 23, 1981, p. 1820), 1980 to 1982. Who's Who In American Law, 1987. Rated A-V in Martindale-Hubbell.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Answer:

American, Pennsylvania and Philadelphia Bar Associations; (ABA Sections: Litigation and Torts and Insurance Practice); (Pa. Bar Association Sections: Litigation and Workers' Compensation); Philadelphia Bar Association, Medico-Legal Committee, Chairman 1976, member Workers' Compensation Committee; Philadelphia Association of Defense Counsel (Secretary-Treasurer 1980 and 1981, Vice President 1982, President 1983-1984; Pennsylvania Defense Institute; Philadelphia Workers' Compensation Claims Association; National Association of Railroad Trial Counsel; International Legal Fraternity of Phi Delta Phi; Member Philadelphia Bar Association Commission on Judicial Selection and Retention, 1983 to 1987; member Philadelphia Bar Association Committee to Celebrate the Bicentennial of the U.S. Constitution, 1985 to 1987. Temple University Law Alumni Association Executive Committee, 1985 to date; American Arbitration Association, panel of arbitrators, 1972-1980.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Answer:

Pennsylvania Defense Institute, Harrisburg, Pennsylvania (may do lobbying)

Past Moderator, Board of Deacons, three terms on the Board of Elders, one term as Trustee of Abington Presbyterian Church; past member, Board of Directors, University of Wisconsin Alumni Club in Philadelphia, PA; President of Highland School PTA, 1969-70 and past President and Board Member, Rydal-Meadowbrook Civic Association; Presently: Trustee, Abington Memorial Hospital Health Care Corporation; Board of Directors, World Affairs Council of Philadelphia; Senate of Pennsylvania Select Committee on Medical Malpractice (formed by Senator Robert Jubilerer) 1983-85; Philadelphia Racquet Club; Republican Party; Friends of Independence National Historical Park; Philadelphia Museum of Art; Abington Presbyterian Church; The Pennsylvania Society.

11. Court Admission: List all courts in which you have been admitted to practice, with date of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Answer:

(All court admissions are to present without lapse)

Court of Common Pleas of Philadelphia County, February 5, 1959; Municipal Court of Philadelphia County, February 27, 1959; Orphans' Court of Philadelphia County, February 27, 1959; Supreme Court of Pennsylvania, April 27, 1959; Superior Court of Pennsylvania, September 14, 1959; United States District Court for the Eastern District of Pennsylvania, March 20, 1961; U.S. Court of Appeals for the Third Circuit, November 5, 1962; Court of Common Pleas of Montgomery County, February 23, 1968; Court of Common Pleas of Bucks County, November 18, 1970; United States Supreme Court, December 14, 1970; Commonwealth Court of Pennsylvania, December 31, 1970; Court of Common Pleas of Delaware County, August 2, 1972.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Answer:

United States Review; author, "Digest of Pennsylvania Workmen's Compensation and Occupational Disease Law" 1971 through 1974. (Copies attached as Exhibit "1".)

Pennsylvania Bar Institute; author, "Pennsylvania Workmen's Compensation Manual" 1972, co-author revised manual 1975, 1980, 1982, 1985, and 1987. (Representative is the 1985 Manual, a copy of which is enclosed as Exhibit 2.)

Pennsylvania Lung Association, Pennsylvania Thoracic Society, and the Hahnemann Medical College and Hospital; author of "Pneumonconiosis and the Pennsylvania Law" published in Joint Symposium on Coal Worker's Pneumonconiosis, March 30, 1978. (Copy attached as Exhibit "3")

13. Health: What is the present state of your health? List the date of your last physical examination.

Answer: Excellent. January 28, 1987 and December 7, 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Answer: None.

15. Citations: Not applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Answer:

1. Appointed, Abington-Rockledge, Pennsylvania Board of School Directors and served February to December, 1971.
2. Ran unsuccessfully for full term on School Board, 1971.
3. Judge of Elections, Abington Ward 11-1, elected and served 1972-1977 (Election Day official).

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

    1. whether you served as clerk to a judge, and, if so, the name of the judge, the court, and the dates of the period you were a clerk;

Answer:

Law Clerk to Judge Ethan Allen Doty, Court of Common Pleas of Philadelphia County, May 1958 to November 1958.

2. whether you practiced alone, and, if so, the addresses and dates;

Answer: No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Answer:

1958 to 1963: Staff trial counsel, PMA Insurance Co., 925 Chestnut Street, Philadelphia, PA 19107

1963 to date: Rawle & Henderson, Philadelphia, PA Associate, 1963-1966; General Partner, 1966 to present

1980: Special Counsel to Senate of Pennsylvania Labor and Industry Committee

1980 to date: Member of Pennsylvania Secretary of Labor and Industry Committee for Referees' Rules and Procedures. (Rules published 11 Pa. Bulletin, No. 21, May 23, 1981, p. 1820)

1966 to 1982: Lecturer in Law, Temple University School of Law, Graduate Division, teaching full credit graduate course on a part-time basis

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Answer:

Civil litigation and appellate practice, 1959 to date.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Answer:

Representing corporations, insurance carriers, physicians, hospitals, self-insured employers and product manufacturers in the defense of civil litigation and thus conducting and supervising investigation, pretrial discovery, trial and appellate practice in a broad area including, inter alia, negligence and products liability law, toxic torts, complex litigation, medical malpractice, zoning, worker's compensation and occupational disease, FELA, and insurance law, acting as trial counsel in hearings, jury trials and appeals in all of these areas of practice in the state and federal courts as well as before the Workmen's Compensation Appeal Board and Referees. The most singular sub-specialization has been medico-legal matters, including workers' compensation, occupational disease, toxic torts, medical malpractice and products liability litigation.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance giving dates.*

Answer: Always regularly. In earlier years, workers' compensation, occupational disease, general tort and medical malpractice cases predominated. From 1975 to 1982, my practice shifted to defending products liability and toxic tort cases.

Certainly, a much greater number of cases were previously tried by me as sole counsel. In more recent years, in addition to writing and teaching I have been training and supervising younger lawyers in their handling of their cases and acting as chief counsel in larger more complex cases with associate and junior partner assistance, especially in products liability, complex litigation and medical malpractice but continuing as sole counsel in worker's compensation cases only on appeal.

2. What percentage of these appearances was in:

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* The information provided in Paragraphs 17.c.1. through 17.c.5. is based upon estimates or averages covering a period of over 29 years of practice. I have no records from which to extract exact data.

(a) federal courts;

Answer: 30%

(b) state courts of record;

Answer: 30%

(c) other courts.

Answer: 40% (Workers' Compensation Courts)

3. What percentage of your litigation was:

(a) civil;

Answer: 100%

(b) criminal.

Answer: I defended very few minor criminal cases over my entire career. I was exposed to a variety of criminal cases as a law clerk and investigated as well as testified in criminal trials as a Naval Intelligence Agent.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Answer: Literally scores always as sole or chief counsel.

5. What percentage of these trials was:

(a) jury;

Answer: 50%

(b) non-jury.

Answer: 50%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Hopkins v. Kelsey Hayes, Inc., 628 F.2d 801 (3d Cir. 1980), cert. granted in companion case, G.D. Searle & Company v. Cohn,101 S. Ct. 1972 (1981), decided 455 U.S. 404, 102 S. Ct. 1137, 71 L.Ed. 250 (1982); cert. granted in Hopkins, and judgment vacated and remanded, 455 U.S. 985, 102 S. Ct. 1605, 71 L.Ed. 2d 844 (1982), on remand, 677 F.2d 301 (3rd Cir. 1982).

United States Constitutional issues were presented in this products liability case in which I represented the self-insured defendant, a non-registered foreign corporation, sued three years after the date of the accident which injured plaintiff. I managed and/or participated in (1) the removal of the case from the New Jersey state court to the U.S. District Court, (2) pre-trial discovery and investigation and (3) briefing before the U.S. District Judge in New Jersey, briefing in the U.S. Court of Appeals for the Third Circuit, oral argument in the Court of Appeals and preparation of Petition for Certiorari to the U.S. Supreme Court. Initiated by a motion for summary judgment, our client presented a constitutional challenge to a 1949 New Jersey statute which on its face tolled the two year statute of limitations in actions against non-registered foreign corporations not represented in New Jersey but which nonetheless were amenable to New Jersey long-arm jurisdiction during the entire period the statute was tolled. Since foreign corporations which were registered or represented in the state received full benefit from the statute of limitations we made equal protection, due process and commerce clause arguments which were accepted as justiciable issues and decided by the U.S. Supreme Court which remanded the case on commerce clause issue for further action in the Circuit and District Courts. Our case was later tried on the merits by my partner Ms. Mattern and ultimately ended in a victory for our client.

I had no personal contact with the U.S. District Judge but I presented oral argument before Third Circuit Judges Arlin M. Adams (now of Schnader, Harrison, Segal & Lewis, 1600 Market Street, Philadelphia, PA, (215) 751-2072), Senior Judge Leonard I. Garth, Room 20316, U.S. Post Office and Court House, Newark, NJ 07101, (201) 645-6521, and Francis L. Van Dusen, Room 20613, U.S. Court House, Philadelphia, PA (215) 597-4116, on February 11, 1980. Plaintiff's counsel is J. Llewellyn Mathews, P.O. Box 95, Lakehurst Road, Browns Mills, New Jersey 08015, telephone (609) 893-3122. My law firm partner is Patricia A. Mattern, Esquire, 211 South Broad Street, Philadelphia, PA 19107, telephone (215) 875-4075.

2. Silas, et al. v. Smith, et al., 361 F. Supp. 1187 (Three Judge Court, E.D. Pa. 1973). On behalf of the one defendant Haverstick-Borthwick and its worker's compensation insurer, I managed the pre-trial preparation and conducted the non-jury trial. This was a constitutional due process and Civil Rights Act of 1971 (42 U.S.C. §1983) class action attack on Section 413 of the Pennsylvania Workmens Compensation Act (77 P.S. §774 insofar as the act permitted an employer or workers' compensation insurance carrier an automatic supersedeas of the payment of weekly compensation benefits by merely filing a Petition for Termination with the Pennsylvania Department of Labor and Industry without formal notice to claimant or evidentiary hearing before payment of benefits stopped. The plaintiffs' attack was unsuccessful as the three judge court found the Statute and its application constitutional as a matter of law and no action under color of state law was found to be involved. There was no appeal to the Supreme Court of the United States. The new statute effective in 1972 was later the subject of Federal Court class action attack and I represented one of the insurers in this later suit. (See Paragraph 6 infra.) The trial Judges in Silas were Alfred Luongo (author of opinion) (now deceased), Thomas A. Masterson (since resigned), District Judges and James Hunter, III, now Senior Circuit Judge (Room 118, U.S. Court House, 401 Market Street, Camden, NJ 08101). For plaintiffs: Andrew S. Price, Esquire. Three Mellon Bank Center, 16th Floor, Philadelphia, PA 19102, telephone (215) 568-1155. Counsel for defendants Smith and the Commonwealth was Deputy Attorney General Lawrence T. Hoyle, Jr., Esquire, 1424 Chestnut Street, Philadelphia, PA 19102, telephone (215) 963-3600).

3. Workmen's Compensation Appeal Board and Reinhard v. United Parcel Service, 21 Pa. Cmwlth. Ct. 502, 346 A.2d 852 (1975). In this workers' compensation case I represented the employer and its insurer in the appeal from the refusal of the Board to reverse and remand because of certain missing evidence and most importantly

because the Board refused to recognize other after-discovered evidence of possible fraud and perjury by claimant at trial. The Commonwealth Court reversed and remanded holding inter alia, that the Board's refusal to recognize the after-discovered evidence was a clear abuse of discretion. To my knowledge, this is the only decision of its kind construing Section 425 of the Pennsylvania Workmen's Compensation Act (77 P.S. §856 so as to require the Board to remand a case as a matter of law. After remand and a new trial, a verdict was entered in favor of our client based essentially upon the after-discovered evidence. The trial judge was Referee Frank M. Perna, Great Valley Shopping Center, Routes 30 and 401, Suite 303, Malvern, PA 19355, telephone (215) 436-3595; counsel for claimant was James P. Fox, Esquire, Suite 706, One Montgomery Plaza, Norristown, PA 19401, telephone (215) 275-7990.

4. Swift v. Zoning Hearing Board of Abington Township, appellee and Crestmont Halfway House, intervenor appellee, 16 Pa. Cmwlth. Ct. 356, 328 A.2d 901 (1974). I represented the intervenor, a local non-profit corporation, Crestmont Halfway House. It was a drug abuse counseling, referral and civic center in a zoning battle for the use of a storefront walk-in office and meeting rooms in Willow Grove, PA. The main issue throughout the many hours of hearing and trial de novo before Judge John Henry (now deceased) of the Court of Common Pleas of Montgomery County was whether the Halfway House was a civic center or similar use as permitted in the F-1 Commercial Classification and whether it was in part a medical facility as claimed by the protestants. Our client was successful at each state of the proceedings and the Opinion of Judge Blatt of the Commonwealth Court was the first, and remains the guiding Pennsylvania law, on the ability of such a necessary non-commercial zoning classification. Opposing counsel at trial was Jack A. Rounick, Esquire, 68-70 E. Penn Street, Norristown, PA 19401, telephone (215) 272-6666. Counsel for Abington Township was Daniel B. Michie, Jr., Esquire, 211 South Broad Street, Philadelphia, PA 19107, telephone (215) 546-1880. Counsel for appellant was Clark F. Hess, Esquire, 700 Valley Forge Plaza, King of Prussia, PA 19406, telephone (215) 265-0800.

5. Bowers v. Garfield, 382 F. Supp. 503 (E.D. Pa. 1974) aff'd. 503 F.2d 1398 (3d Cir. 1974), 89 A.L.R. 3rd 74 (1979). On behalf of the defendant, Dr. Garfield, I personally handled the pre-trial preparation, jury-trial and appellate aspects of this medical malpractice action applying Pennsylvania law. The bifurcated trial of about one week, on liability only, began October 19, 1973 before U.S. District Judge (now Senior Judge) J.

William Ditter, Jr., in Philadelphia. The jury found for the defendant on special interrogatories and the Court of Appeals affirmed. The case is apparently the first and perhaps remains the only reported appellate decision applying Pennsylvania law where the Court held that a plaintiff in a medical negligence case, claiming lack of informed consent, has the burden of proving that a reasonable person in the position of the patient would have refused the surgery if advised of the risks claimed to have been omitted by the surgeon. I am told that this decision is commonly used by counsel and judges as a guide at the trial level of this type of case. Opposing counsel was William C. Hewson, M.D., Esquire, 101 E. Ashbridge Street, West Chester, PA 19380, telephone (215) 692-4934. Senior Judge Ditter is at Room 6614, U.S. Court House, Philadelpia, PA, (215) 597-9640.

6. Baksalary, et al. v. Smith, et al., 579 F. Supp. 218 (E.D. Pa. 1984) constitutional issues, and 591 F. Supp. 1279 (E.D. Pa. 1984) consent decree and opinion. We represented Bituminous Casualty Corporation, a named class defendant in this bilateral class action. The Court's remedy opinion of July 30, 1984 describes the litigation at 591 F. Supp. 1281. The original main issue in the case was whether certain provisions of the Pennsylvania Workmen's Compensation Act, as amended in 1972, permitting an automatic cessation of benefits by the employer upon the filing of a Termination Petition without an evidentiary hearing were violative of 42 U.S.C. §1983 and thus unconstitutional. A three Judge Court held for plaintiffs.

My partner Patricia A. Mattern, Esquire and I were de facto lead counsel for the named insurance companies and self-insured class members and negotiated and drafted the consent decree on remedies with the Commonwealth of Pennsylvania and plaintiffs later approved by the Court at a Rule 23(e) fairness hearing and reported at 591 F. Supp. 1292-1299. We participated in drafting the ten Exhibits to the decree reported at 591 F. Supp. 1300-1313.

After the liability decree was entered on February 1, 1984, I participated in every phase of the proceedings which were extremely contentious, novel, and complex. I presented oral argument on behalf of all named class insurance carriers and self-insured defendants at the fairness hearing on June 18, 1984 supporting the proposed consent decree over objections by absent class members. The decree was adopted, all appeals by objecting class members were ultimately denied. I participated in implementing the decree including assisting in training the state compensation referees in how to follow the court's orders for special supersedeas hearings. This case was one of first impression indeed. At the time the settlement was conceived, at stake was a claim for past benefits withheld estimated at $35,000,000.

Plaintiffs' counsel was Harold I. Goodman, Esquire, Sylvania House, Juniper and Locust Streets, Philadelphia, PA, (215) 893-5354; knowledgeable representative defense counsel were Debra K. Wallet, Esquire, then Deputy Attorney General now of Suite 405, 890 Poplar Church Road, Camp Hill, PA 17011, (717) 737-1300; Joseph R. Thompson, Esquire, 410 Public Ledger Building, Philadelphia, PA (215) 627-3087; and sub silencio amicus counsel for the Pennsylvania Self Insurers' Association, Stanley H. Siegel, Esquire, P.O. Box 8677, Lewistown, PA 17044, (717) 248-3911. The judges were Pollak and Green of the U.S. District Court for the Eastern District of Pennsylvania and then Third Circuit Court Judge Arlin M. Adams, now of Schnader, Harrison, Segal & Lewis, 1600 Market Street, Philadelphia, PA 19103, (215) 751-2072.

7. Andrew J. Nicklos v. The Firestone Tire & Rubber Company, 346 F. Supp. 185 (E.D. Pa. 1972), aff'd 485 F.2d 680 (3rd Cir. 1973).

Andrew J. Nicklos, employed by our client Firestone Tire & Rubber Co. suffered a heart attack while lifting a heavy roll of material to a rack five feet high. Nicklos filed a petition for compensation under the Pennsylvania Workmen's Compensation Act. The Workmen's Compensation Board found that there was no accident within the meaning of the Act and no medical causal relationship between the lifting incident and the heart attack and denied relief. The Board decision was affirmed on appeal.

Nicklos then brought a diversity action under 28 U.S.C. §1331 against Firestone in the U.S. District Court based upon theories of negligence and failure to provide a safe place to work, among others. The district court granted Firestone's motion for summary judgment on the basis of the exclusivity of the remedy under the Act and collateral estoppel. Nicklos appealed the dismissal on these grounds to the United States Court of Appeals for the Third Circuit which affirmed.

I personally tried the worker's compensation case in the state tribunal and defended Firestone in the District Court. I prepared and filed the necessary documentary evidence to augment the record in the District Court and prepared, briefed and argued the Motion for Summary Judgment in the

District Court. I prepared and presented the case for appellee Firestone in the Court of Appeals where the United Steelworkers of America AFL-CIO intervened as *amicus curiae*.

The case was significant and novel because the worker and amicus were trying to establish a separate cause of action against employers for injured workers who failed to qualify for state compensation benefits because of failure to meet their burden of proving a case in the compensation court. The appealing case for plaintiff presented a seemingly obscure legal or social anomaly of a worker being unable to secure benefits in either court. In granting summary judgment for our client Firestone, then District Judge Luongo (now deceased) adopted my argument that the claim or type of injury of Nicklos was cognizable within the legal compensation scheme in Pennsylvania and the mere failure of plaintiff to secure an award should not open a legal door to an action at law against the employer since there was no such legal authority under the applicable state law.

Opposing counsel was Joseph Lurie, Esquire, 1737 Chestnut Street, Philadelphia, PA 19103, telephone (215) 665-1600.

8. *Cummins v. Firestone*, 344 Pa. Super. 9, 495 A.2d 963 (1985). This was a products liability case. Richard E. Cummins, Jr. was injured while visiting a truck service garage when he was struck by parts of a multi-piece tire and rim assembly which explosively separated while being inflated. The actual multi-piece assembly involved in the accident was not identified and became irrevocably lost when the service garage personnel remounted the rim and parts and returned them to the stream of commerce.

   Plaintiff claimed against twelve companies alleged to be multi-piece rim and wheel manufacturers as well as the owner of the truck fleet, the owner of the premises, the manufacturer of the tractor and trailer and organizations in the business of selling and supplying truck tires and rims. Plaintiff was not able to allege that the twelve rim manufacturers constituted virtually the whole industry.

   Several defendants including our client Firestone filed Preliminary Objections in the nature of a demurrer to all counts of the amended Complaint which included alleged negligence; strict liability under Section 402A of the Restatement Second of Torts; concert of action among defendants; industry-wide liability and market share liability. The demurrers of several defendants were sustained by the trial court and plaintiff appealed to the Pennsylvania Superior Court. The fate of all rim manufacturers whose demurrers had not yet been ruled upon, including our client, depended upon the outcome of the appeal as to The Budd Co. Therefore, we were very active in the appeal as well.

The Superior Court in its opinion affirmed the lower court's action and held that the failure to identify the manufacturer of the rim assembly which allegedly failed and caused the accident, was fatal to both the negligence and strict liability theories of the plaintiff's case. The court rejecting as unprecedented in Pennsylvania law and, expressing unwillingness to adopt the claimed new theories, refused to accept the concert of action, industry-wide liability and market share liability theories contended by plaintiff.

In order to keep this summary somewhat brief, I refer the reader to the published opinion of Superior Court Judge Hester for the reasons cited by the court for rejecting the theories of liability presented by plaintiff. This case has been cited with approval at 351 Pa. Superior 275, 283 and 287 and 643 F. Supp. 1459 and 1461.

I was the partner responsible for this case to the client Firestone. I supervised and directed the work of my senior associate, now partner, Patricia A. Mattern, Esquire, who prepared trial court documents, attended certain conferences and depositions. I had little contact with plaintiffs' counsel and none with the trial court judge. I made the major legal decisions in the case, decided to file the demurrer and directed the development of the theories on appeal. I cooperated with, met with and developed the arguments on appeal with The Budd Company's attorney, Edward C. Schmidt, Esquire, of Rose, Schmidt, Chapman, et al., 900 Oliver Building, Pittsburgh, PA 15222 (412) 434-8592. I argued on behalf of Firestone before the Superior Court of Pennsylvania in Pittsburgh. The case was concluded when, upon remand by the Superior Court, plaintiff did not oppose the granting of the demurrer of our client.

9. Amoco Trinidad Oil Co. v. Royal Insurance Company, Limited, U.S. District Court for the District of Delaware, Civil Action No. 74-82, Slip Opinion of Schwartz U.S.D.J., July 9, 1976.

On December 5, 1967, Mickey Francis, a diver aboard the drilling rig "Blue Water II" off the coast of Trinidad, contracted the bends and subsequently alleged total disability after having made two scuba dives to a 230 foot depth without intermediate decompression. Both Francis and his wife sued plaintiff company, allegedly in control of the diving operation on the drilling rig at sea, for personal injuries and loss of consortium.

This was a Federal declaratory judgment action under 28 U.S.C.A. §2201 wherein plaintiff, a Delaware corporation, with its principal place of business in Port of Spain, Trinidad, sought a declaration that it had insurance coverage and defendant had a duty to defend plaintiff in the Francis' lawsuit. Defendant, our client, is a British corporation with offices in England and Trinidad.

The plaintiff sought interpretation of an insurance policy in which plaintiff was a named insured. The defendant denied coverage and we asserted affirmative defenses, including fraud ab initio, late notice of the accident and the lawsuit and dismissal on the grounds of forum non-conveniens. Royal first received notice of the accident and lawsuit over two and one-half years after the accident and six months after plaintiff was sued by Francis. The U.S. District Judge rejected the forum non conveniens argument but granted summary judgment to defendant Royal Insurance on the ground that applicable English law declared the notice requirement of the policy to be a condition precedent to liability. The court held that the late notice breached the policy requirement of notice to Royal as soon as possible after plaintiff had notice of any occurrence which may give rise to a claim. The court held that unlike most American law, English law presumes prejudice by the delay and Royal did not have the burden of proving prejudice to successfully invoke the late notice defense. There was no appeal.

In representing the defendant Royal I conducted the necessary local research of English law and secured opinions from barristers in England and Trinidad. I prepared and filed all of the necessary documentation to supply an evidentiary record to establish the case as ripe for the court to consider summary judgment. I prepared the briefs for Royal and argued our Motion in Wilmington, Delaware.

Opposing counsel was Thomas E. Byrne, Jr., Esquire of Krusen, Evans & Byrne, Public Ledger Building, 6th and Chestnut Streets, Philadelphia, PA 19106, (215) 923-4400. I understand Mr. Byrne is retired, but can be reached through his law firm. The trial judge was then Murray M. Schwartz, U.S. District Judge, now Chief Judge, Federal Building, 9th and King Streets, Wilmington, Delaware, (302) 573-6355. This is the only case in which I ever appeared before Judge Schwartz. A copy of Judge Schwartz' Memorandum Opinion of July 9, 1976 is enclosed herewith as Exhibit "4".

10. Raymond Donovan v. Lawrence Smith, et al., U.S. District Court, E.D. Pa., C.A. 82-1325. This was an action by the United States Secretary of Labor pursuant to the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. §1001 et seq. alleging violations of Title I of ERISA arising from the purchase and maintenance of allegedly imprudent investments in individual whole life insurance policies on behalf of the participants of employee benefit plans maintained by four local unions. The plaintiff sought money damages and injunctive relief to halt the practice and dismissal and barring of eighteen individual trustee defendants from serving as trustees in the future.

I represented five individual trustees of The Severance plan of the Paperworkers, Local 286 of Philadelphia. While this litigation was in progress, a named defendant Lawrence Smith was indicted for I believe inter alia fraud and conspiracy in the U.S. District Court in New Jersey. There were allegations in the instant case that Smith, who sold the whole life insurance to the union trustees on behalf of Capitol Life Insurance Company of Denver, Colorado, was paying kickbacks to trustees from his commissions. There were rumors of impending indictments or grand jury investigations of several of the named trustees defendants. The discovery was plagued with requests for protective orders and witnesses invoking the Fifth Amendment. Deposition transcripts were placed under seal in the court's file in order to avoid their use in criminal proceedings.

We joined Capitol Life Insurance Company as a third party defendant. After many months of aggressive discovery, including depositions of a score of witnesses and parties, the case was settled on a consent decree (copy attached) negotiated under the supervision of a United States Magistrate. The claim for money damages was for about $1,000,000 and the case was settled for $550,000. Injunctive relief was imposed upon several individual defendants.

I participated in depositions and discovery in the 1983 phase of the case. I was lead counsel in getting this complex case settled and represented all defendants in meetings with the Magistrate to move the matter toward settlement. I negotiated the consent decree with the counsel for the Department of Labor, participated in negotiating a publicity control order and negotiated and participated in drafting a mutual release document.

The trial court judge, with whom I had modest contact in the case, was James T. Giles, U.S.D.J., Room 8613, U.S. Court

House, Philadelphia, PA, (215) 597-0692, and the Magistrate was Edwin E. Naythons, Room 4413, U.S. Court House, Philadelphia, PA, (215) 597-7833.

Counsel for the U.S. Department of Labor were Norman P. Goldberg, Esquire, Sherwin S. Kaplan, Esquire, and Virginia C. Smith, Esquire, Office of the Solicitor, Department of Labor, P.O. Box 1914, Washington, DC 20013, (202) 523-8637.

Knowledgeable representative counsel among the twenty-three defendants were Henry S. Ruth, Jr., Esquire, Law Department, UNISYS Corp., Box 500, Blue Bell, PA 19424, (215) 542-4068 and Jeanne A. Smith, Esquire, Shared Medical Systems, Corp., 51 Valley Stream Parkway, Malvern, PA 19355, (215) 251-4259, counsel for Capitol Life Insurance Company (both of whom were then at Saul, Ewing, Remick & Saul, Philadelphia, PA); Leonard Dubin, Esquire, 1200 Four Penn Center Plaza, Philadelphia, PA 19103, (215) 569-3700 counsel for Lawrence A. Smith; Bruce E. Endy, Esquire, 260 S. Broad Street, Philadelphia, PA 19102, (215) 732-0101, counsel for Trustees of Local 1034, et al.; Sam L. Warshawer, Esquire, 2032 Chancellor Street, Philadelphia, PA 19103, (215) 567-3322, counsel for trustee Joseph Merbeck; and John C. Lane, Esquire, 466 Kinderkamack Road, Oradell, NJ 07649, (201) 261-3229, counsel for trustees Kasser and Frank. (A copy of the Consent Decree is enclosed herewith as Exhibit "5".)

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Answer:

In recent years at Rawle & Henderson (a seventy-two lawyer general practice firm), I have served as a member of the Compensation Committee which sets each partner's share of the profits annually, as Legal Personnel Partner, Office Services Partner and a member of the Administrative Committee managing the firm, as the Civic Affairs Partner and as Chairman, 200th Anniversary Committee of Rawle & Henderson, 1983.

As Special Counsel to the Pennsylvania Senate Labor and Industry Committee, I prepared an analysis of twenty-two (22) bills pending before the Committee in 1980, attended and/or analyzed the testimony of five (5) public legislative hearings, the transcripts of eleven hundred (1,100) pages, plus documents exceeding that number and wrote a comprehensive report of the hearings. Chief Counsel to the Committee was Leonard M. Sagot, Esquire, 1814 Chestnut Street, Philadelphia, PA 19103, telephone: (215) 564-5600.

In June 1981, after approval in the merit selection process by the Pennsylvania Appellate Court Nominating Commission, I was appointed by Republican Governor Thornburgh as judge of the Commonwealth Court of Pennsylvania. On October 14, 1981, I received the unanimous bi-partisan favorable vote of the Judiciary Committee of the Senate of Pennsylvania. On November 16, 1981, my nomination was withdrawn from the Senate because the Democratic Senators would not provide the necessary eight (8) votes to make up a two-thirds majority required for confirmation. On November 10, 1981, I had received twenty-six (26) votes for confirmation and nineteen (19) Democratic negative votes. The failure to confirm was strictly based upon a political disagreement between Democratic Senators and Republican Governor Thornburgh which is mentioned in a newspaper article of November 11, 1981. The written endorsement of the Pennsylvania Bar Association and a telegram from Dean Peter Liacouras (now President of Temple University) may be of interest. (A copy of each of these documents is enclosed herewith as Exhibit "6".) After the November 16, 1981 vote, I withdrew my name from further consideration.

I have appeared as an expert witness in Pennsylvania workmen's compensation law before the Superior Court in Bergen County, NJ; before a Pennsylvania Workmen's Compensation Referee; before the Senate of Pennsylvania Labor and Industry Committee in 1979 and 1980 and before the Pennsylvania Labor Relations Board in 1974.

I have presented the following (among others) visiting lectures by invitation:

Philadelphia College of Osteopathic Medicine (Medical malpractice lecture); University of Pennsylvania, Graduate School of Medicine (workmen's compensation law); Temple University School of Law (workmen's compensation law for undergraduate students); Pennsylvania Lung Association, Pennsylvania Thoracic Society (lecture on occupational disease law and medicine); Philadelphia Workmen's Compensation Claims Association (lectures and programs on workmen's compensation and occupational disease law); Pennsylvania Bar Institute (medical malpractice program); University of Pennsylvania School of Law (medico-legal trial practice); Philadelphia Bar Association Bench Bar

Conference, (lectures on civil procedure and medico-legal subjects); Philadelphia County Medical Society, October 1982 (medical malpractice); Philadelphia Psychiatric Center, 1986 (lecture on Quality Assessment Management and Risk Management by corporate trustees of a hospital).

Asbestos Products Liability Litigation (Personal Injury and Commercial Litigation)

For five years (1976 to 1981) I was partner in charge of about five hundred (500) asbestos products liability lawsuits pending in the Court of Common Pleas of Philadelphia, outlying counties and the U.S. District Court on behalf of PACOR, Inc., the Johns-Manville distributor in the Philadelphia area. Reporting to me were a junior partner, five to six associates and two full time paralegal assistants. Our role is concluded because of the bankruptcy of our client, but Common Pleas Judge Harry Takiff of Philadelphia is the most knowledgeable about my participation and plaintiffs' attorneys Gene Locks, Esquire with Martin Greitzer, Esquire, 1500 Walnut Street, Philadelphia, PA 19102, telephone (215) 893-0100, defense attorneys Perry S. Bechtle, Esquire, 700 IVB Building, 1700 Market Street, Philadelphia, PA 19103, telephone (215) 561-4400 and Albert L. Bricklin, Esquire, 1800 IVB Building, Philadelphia PA 19103, telephone (215) 561-4300 are representative attorneys who know of my participation in this litigation.

Since 1984, I have been partner in charge of complex asbestos property damage national class action commercial litigation in the U.S. District Court for the Eastern District of Pennsylvania and in the Philadelphia Common Pleas Court representing W.R. Grace & Co. The class plaintiffs are the owners of all primary and secondary private and public school buildings and owners of all office buildings leased to the United States Government seeking damages for the cost of removing or abating asbestos fireproofing, insulation and plaster in thousands of buildings. I supervise a team of two partners, four associates and a paralegal assistant. The amount claimed is several hundred million dollars in the state courts and an additional several hundred million dollars nationwide.

I was a lecturer in Law at the Temple University School of Law, Graduate Division, from 1966 to 1982, teaching full credit graduate course on a part-time basis.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   Answer: (1) Rawle & Henderson Retirement Plan (Keogh and 401(k) plans), value about $220,000, totally vested; (2) Fixed sum termination plan from Rawle & Henderson, amount to be paid within three years; (3) Return of capital, about $80,000.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

   Answer: I plan to withdraw my pension funds from the Rawle & Henderson Retirement Plan; I plan to arrange payout of all sums due me by Rawle & Henderson within three years of my resignation from the firm.

   I plan to recuse myself from hearing or participating as a judge in any case wherein a Rawle & Henderson client which I represented is a party and any case wherein a Rawle & Henderson partner or associate is counsel for a period of time and under a plan to be approved by the Judicial Ethics Committee of the Judicial Conference of the United States and the United States District Court for the Eastern District of Pennsylvania or devised in accordance with the applicable judicial ethics rules and guidelines.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   Answer: No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   Answer: Please see attached Schedule, Exhibit "7".

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   Answer: Please see attached Financial Statement, Exhibit "8".

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   Answer: Other than contributing funds to other candidates' campaigns, only my own campaign (primary and general elections) for School Director of Abington-Rockledge School District, Montgomery County, Pennsylvania in 1971.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Answer:

When I was a senior in law school, I donated several hours a week to the Legal Aid Society counseling disadvantaged persons.

For several years in the early 1960's, I was a member of the Election Day Lawyer's Committee for which I policed polling places for the watchdog civic organization, Philadelphia Committee of Seventy, to ensure legal voting practices.

For several years in the late 1960's on each primary and election day, I was a member of the Philadelphia Republican City Committee Lawyer's Election Day team and I represented disenfranchised voters in Election Court, filing petitions and successfully presenting testimony to secure a Court Order that the citizens could vote. All of these voters were disadvantaged minorities.

For several years in the 1960's and early 1970's, I represented Crestmont Halfway House, a non-profit community service organization providing general counseling as well as litigation of a zoning case wherein neighbors protested my client using a storefront in a commercial area for a drug abuse counseling and referral center in a minority disadvantaged neighborhood. I won the case at trial and was successful on appeal. During this time, I spent several hundred hours in providing legal services. (See Swift v. Zoning Hearing Board discussed and cited at Question 18, No. 4, Page 11 above.)

I was Program Chairman, Vice President and President of the Highland School PTA (a public school) in the year 1967 to 1970 serving the families of about 400 to 600 students. During that time, I led the legal presentation of the PTA to secure a new addition to the school building by petitions to the School Board. (I estimate spending several hundred hours.)

From 1972 to 1987, I served in a writing, editorial, planning and teaching capacity for the Pennsylvania Bar Institute during which time I authored or co-authored six books on Pennsylvania workers' compensation and occupational disease law and presented eighteen lectures and seminars all across the state, live and on video and audio tapes, to teach other lawyers to serve disadvantaged citizens. The number of hours spent was well over one thousand.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

Answer:

While I do not believe the organization ever invidiously discriminated against any minority, I report the following:

For many years, I have been a member of the Philadelphia Racquet Club, an athletic and social club, which had no female members until about five or six years ago. I voted in favor of a by-law change and women have been admitted since then, including a woman partner of my law firm. I expect to resign from the club upon confirmation since I use the club exclusively for business purposes.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to our nomination and interviews in which you participated).

Answer:

I was recommended by the Pensylvania Federal Court Nominating Commission.

The existence of vacancies on the bench of the United States District Court for the Eastern District of Pennsylvania are publicized as they occur. When I became interested in judicial office as a career change, I responded to those notices and requests for application. I answered detailed professional questionnaires, was interviewed on many occasions and was recommended for nomination on several occasions by the Commission. On the last occasion in 1987 both Senators Heinz and Specter recommended me to the President. I am a registered Republican who has contributed to candidates for office on a personal basis. My loyalty to the concepts of: excellence in the judiciary, public service by lawyers and support for Republican candidates is well known to the political leaders in Pennsylvania. I have not, however, been a politician or political leader, a fundraiser, a campaign worker, or candidate for office myself except for my local school board once in 1971. I was encouraged to seek a U.S. District judgeship by citizens, colleagues at the Bar and other judges. I asked influential politicians to communicate their support for my interest to Senators Heinz and Specter. I was interviewed by several persons in the office of the United States Attorney General in June 1987.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

Answer:

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Answer:

I certainly understand and would follow the law, that within its limited jurisdiction, a Federal court must be open to determine disputes, mindful of the fundamental doctrine of the separation of powers provided in the United States Constitution. The Federal courts have the task of enforcing and following the law, and should not knowingly or inadvertently legislate by effectively making new statutory law or effectively adding to existing statutory law. Such is the task of elected officials in the Congress or state legislature. Following and enforcing statutes and well reasoned accepted law at the trial court level, reinforces the important related concept of certainty of the law, based upon which our citizens may plan their personal and commercial affairs with an expectation of a reasonably certain result. Nonetheless, a trial court can carefully suggest and readily enforce changes in the law to be made or already set by appellate courts which follow a policy of modernizing outdated law.

Federal judges should, in general, confine their decisions to resolving the dispute at hand and not attempt to solve generally perceived problems. Where required by law to craft an order requiring a person or institution to cease and desist from or take action, a judge should generally aim to allow the person or institution to govern themselves or itself within the general bounds of the order rather than insist on mandating the details of how compliance is to be accomplished.

Nevertheless, if in spite of attempts by the court to follow the general rules of restraint and abstention, there is continued violation of the law or court order, or when the known harm, certain to occur, will egregiously injure persons and nullify legally protected rights or liberties, then a Federal court must follow an applicable clear mandate of law or the Constitution to prevent such harm in cases of ripe disputes within its jurisdiction.

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF PHILADELPHIA :

AFFIDAVIT

I, LOWELL A. REED, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 11, 1988
(DATE)

(NAME)

Sworn to and subscribed before me this 11th day of January, 1988

Mary Makovec
Notary Public
MARY MAKOVEC
Notary Public, Phila., Phila. Co.
My Commission Expires June 6, 1988

FINANCIAL STATEMENT

NET WORTH

NOVEMBER 1987

LOWELL A. REED, JR. & Diane B. REED

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

TO NEAREST $ 1000.00

ASSETS			
Cash on hand and in banks	$ 13,000		
U.S. Government securities—add schedule	None*		
Listed securities—add schedule**	3,000		
Unlisted securities—add schedule	None*		
Accounts and notes receivable:			
Due from relatives and friends	None		
Due from others	None		
Doubtful	None		
Real estate owned Pennsylvania Residence	200,000		
Real estate mortgages receivable	None		
Autos and other personal property	60,000		
Cash value—life insurance	5,000		
Other assets—itemize:			
Sail boat	45,000		
Pension Fund*	221,000		
I.R.A.'s	18,000		
Equity in law firm	79,000		
Total assets	$644,000		

LIABILITIES			
Notes payable to banks—secured	None		
Notes payable to banks—unsecured	None		
Notes payable to relatives	None		
Notes payable to others	None		
Accounts and bills due	1,000		
Unpaid income tax	None		
Other unpaid tax and interest	None		
Real estate mortgages payable Pennsylvania residence	18,000		
Chattel mortgages and other liens payable Vessel mortgage	38,000		
Other debts—itemize:			
Note to pension fund	15,000		
Total liabilities	72,000		
Net worth	572,000		
Total liabilities and net worth	$644,000		

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	None		
On leases or contracts	None		
Legal Claims	None		
Provision for Federal Income Tax 1987	Estimate Paid		
Other special debt	None		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	No		
Are you defendant in any suits or legal actions?	No		
Have you ever taken bankruptcy?	No		

* See securities in Rawle & Henderson Retirement Plan; schedule attached.

** Listed securities are: IBM, 6 shares $720. and Penna. Power & Light, 60 shares $2040.

Our son Christopher owns $ 8,000. in Vanguard Prime Money Market shares.

UNITED STATES DEPARTMENT OF JUSTICE

SCHEDULE OF SECURITIES LOWELL A. REED, JR.

RAWLE & HENDERSON RETIREMENT PLAN

November, 1987

Trustees account with Kidder Peabody, Philadelphia[1]	$ 61,922.
Trustees account with Prudential Bache, Philadelphia[2]	158,802.
Total	$ 220,724.

---

1. Kidder Peabody account:

Certificate of deposit	$ 10,000.
Webster Cash Reserve Fund	19,000.
Nicholas Fund	32,922
Total	$ 61,922

2. Prudential Bache account:

Certificate of deposit	$ 15,000.
Pru-Bache Money Market	15,000.
See attached 10/31/87 Statement	128,802.
	$. 158,802.

Securities Account Statement

Prudential-Bache
Securities

☐ We value this opportunity to serve you. Any questions concerning your statement should be directed to your Account Executive or the Manager of the office serving your account.

Office Serving Your Account
1515 MARKET STREET
SUITE 300
PHILADELPHIA, PA 19102

Prudential Bache Securities Inc

Control No. 2P-01983 **Page No.** 1

FBO LOWELL A REED JR
RAWLE & HENDERSON RET PLAN
& TRUST DTD 12 14 72
1056 HUNTINGDON RD
ABINGTON PA 19001

Your Account Executive is
SAMUEL A LIEBMAN
SENIOR V.P. INVESTMENTS

Telephone Number
215-241-6700

THE TIME FOR YEAR-END TAX PLANNING HAS ARRIVED AND IT'S NEVER BEEN MORE URGENT. OUR CURRENT "ACTION ALERT" CONTAINS A VARIETY OF IDEAS AND STRATEGIES THAT CAN BE PUT TO WORK FOR YOU RIGHT NOW. ASK YOUR ACCOUNT EXECUTIVE FOR A FREE COPY WHILE THE SUPPLY LASTS.

	Oll	Account	AE	Balances	Opening	Closing	Income	This Period	Year to Date	Portfolio Information	
Account Number	ONH	959669	72	Cash	17CR	74CR	Dividend	800	28100		
Federal ID Number	F23-6545481			Margin	00	00	Municipal	00	00	Priced Portfolio Value	12880221
	From	To		Total (Excluding Short)	17CR	74CR	Other Interest	10728	118203	Net Worth	12880295
Statement Period	OCT 1	OCT 31/87		Short	00	00	Total	11528	146303	Available for Borrowing (Margin)	1698900

Type	Settlement Date	Entry	Quantity	Description	Price or Explanation	Amount Charged To Your Account	Amount Credited To Your Account	Annual % Yield
1	1001	CREDIT		PB UTILITY FUND DIVIDEND	JOURNAL		17781	
1	1015	INTEREST		INT RECEIVED ON 30,000 CERTIF OF GNMA MTG 08144 FM RG 08.50 01/15/2006	INCOME		10728	
1	1015	CREDIT		PRIN RECEIVED ON 30,000 CERTIF OF GNMA MTG 08144 FM RG 08.50 01/15/2006	PRINCIPAL		2748	
1	1019	BOUGHT	312	P B MONEYMART ASSETS	1.00	31200		
1	1027	DIVIDEND	8	P B MONEYMART DIV REINVEST 09/28-10/25	INCOME			

Type			QUANTITY	PORTFOLIO SUMMARY	PRICE	VALUE	ESTM INCOME	XYLD
1		S/K	716	PRUDENTIAL BACHE UTILITIES FUND* INCORPORATED	13.250	948700	NOT AVAIL.	
1			1780	P B MONEYMART ASSETS (INCL FRAC SHARES)	1.000	178055	11748	6.59
1			30000	GOVERNMENT NATIONAL MORTGAGE ASSOCIATION* POOL 008144 RG 08.50 01/15/2006 AMORTIZED VALUE IS .50395247	90.187E	1363506	128508	9.42
1			50000	PHILADELPHIA SVG FD SOC MONEY MULTIPLIER CTF DEP CP 0% 03/20/1989	86.850	4342500	NOT AVAIL.	
1			15000	CD COLUMBIA SAV & LOAN FSLIC RG 0.000 04/02/1990 DTD 08/15/84	78.500	1177500	00	.00
1			40000	CD COLUMBIA SAV & LOAN FSLIC RG 0.000 04/29/1990 DTD 09/05/84	77.970	3118800	00	.00
1			10000	CD BEVERLY HILLS FSLIC BOOK ENTRY ONLY BEVERLY HILLS CA PAY AT MATURITY RG 7.350 05/20/1988 DTD 05/20/87	100.000	1000000	73500	7.35
1			1000	CD LINCOLN AMERICAN SAVINGS&LOAN FSLIC MONTERREY PARK CALIF BOOK ENTRY ONLY RG 0.000 07/25/1991 DTD 04/24/85	69.700	69700	00	.00
1			8000	CD LINCOLN AMERICAN SAVINGS&LOAN FSLIC MONTEREY PARK CALIF BOOK ENTRY ONLY RG 0.000 08/09/1991 DTD 05/08/85	69.450	555600	00	.00
1			2000	CD LINCOLN S&L FSLIC BOOK ENTRY ONLY	62.930	125860	00	.00

ach security position which is marginable is asterisked (*) and each security which is arginable and for which a listed option is also available is double asterisked (**).

All checks are to be made payable to Prudential-Bache
Please retain this statement to assist in your income tax preparation

See reverse side for additional information
Please notify your Account Executive of any change in address

Securities Account Statement

Prudential-Bache
Securities
Prudential Bache Securities Inc

☐ We value this opportunity to serve you. Any questions concerning your statement should be directed to your Account Executive or the Manager of the office serving your account

FBO LOWELL A REED JR

Office Serving Your Account
1515 MARKET STREET
SUITE 300
PHILADELPHIA, PA 19102

Your Account Executive is
SAMUEL A LIEBMAN
SENIOR V.P. INVESTMENTS

Telephone Number
215-241-6700

Control No. 2P-01984 **Page No.** 2

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	Off	Account	AE	Balances	Opening	Closing	Income	This Period	Year to Date	Portfolio Information	
Account Number	ONH	959669	72	Cash	17CR	74CR	Dividend	800	28100		
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	OCT 1	OCT 31/87		Short	00	00	Total	11528	146303	Available for Borrowing (Margin)	1698900

Type	Settlement Date	Entry	Quantity	Description	Price or Explanation	Amount Charged To Your Account	Amount Credited To Your Account	Annual % Yield
			QUANTITY	PORTFOLIO SUMMARY	PRICE	VALUE	ESTM INCOME	XYLD
				MONTEREY PARK CALIF PAY AT MATURITY RG 0.000 09/10/1992 DTD 11/20/85				
				PORTFOLIO TOTALS		12880221	213756	2.82

NOTE: "E" THE PRICE SHOWN IS DERIVED FROM A PRICING MATRIX. ACTUAL BIDS MAY
SIGNIFICANTLY DIFFERENT. CHECK WITH YOUR ACCOUNT EXECUTIVE FOR A RECENT QUOTATI

-UNIT TRUST REINVESTMENT INFORMATION FOR OCT, 1987-
PROVIDED COURTESY OF BANK OF NEW YORK

REINVESTMENT ACCT	TOTAL SHARES	DESCRIPTION	VALUE
988 80329595 5	30.123	GNMA FUND	60306

-------------END OF STATEMENT----------------DATE OF LAST STATEMENT 09/87

ach security position which is marginable is asterisked (*) and each security which is arginable and for which a listed option is also available is double asterisked (**).

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Please retain this statement to assist in your income tax preparation

See reverse side for additional information
Please notify your Account Executive of any change in address

AMERICAN BAR ASSOCIATION **Standing Committee on Federal Judiciary**
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
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125 Broad Street
New York, NY 10004

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1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
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1410 First Virginia Bank Tower
101 St. Paul's Boulevard
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Austin, TX 78701

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SEVENTH CIRCUIT
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One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
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Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

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2005 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

February 10, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: LOWELL A. REED
United States District Court
for the Eastern District of Pennsylvania

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Lowell A. Reed for appointment as Judge of the United States District Court for the Eastern District of Pennsylvania.

Our Committee is unanimously of the opinion that Mr. Reed is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

KIMBA M. WOOD

Birth:	January 2, 1944	Port Townsend, Washington
Legal Residence:	New York	
Marital Status:	Married	Michael S. Kramer one child
Education:	1961 - 1962	University of Geneva
	1962 - 1965	Connecticut College B.A. degree
	1964	Sorbonne University of Paris
	1965 - 1966	London School of Economics M.Sc. (Economics)
	1966 - 1969	Harvard Law School J.D. degree
Bar:	1969	District of Columbia
	1972	New York
Experience:	1969 - 1970	Steptoe & Johnson Litigation Associate
	1970 - 1971	Office of Legal Services Attorney
	1971 - present	LeBoeuf, Lamb, Leiby & MacRae Associate (1971-1978) Partner (1978-present)
Office:	520 Madison Avenue New York, New York 10022 212 715-8225	
Home:	25 Central Park West, Apt 8-Q New York, New York 10023	

To be United States District Judge for the Southern District of New York

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name:** (include any former names used)

I have used my maiden name, Kimba Maureen Wood, at all times except from May 9, 1970 to May 3, 1982, during which time I used the name Kimba Wood Lovejoy.

2. Address: List current place of residence and office address(es).

Residence: 25 Central Park West
Apartment 8Q
New York, New York 10023

Business: LeBoeuf, Lamb, Leiby & MacRae
520 Madison Avenue
New York, New York 10022

3. Date and place of birth:

January 2, 1944; Port Townsend, Washington.

4. Marital Status: (include maiden name of wife, or husband's name) List spouse's occupation, employer's name and business address(es).

Married to Michael Stuart Kramer, journalist. Husband is employed by U.S. News and World Report, 599 Lexington Avenue, New York, New York 10022.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Name of School	Address	From	To	Degrees
University of Geneva	Geneva, Switzerland	Oct. 1961	June 1962	None; I left to attend Conn. College
Connecticut College	New London, Connecticut	Sept. 1962	June 1965	B.A. (cum laude)

Sorbonne, Univ. of Paris	Paris, France	July 1964	Aug. 1964	None; no degree was awarded for these summer school courses
London School of Economics	London, England	Sept. 1965	Sept. 1966	M. Sc. (Econ.)
Harvard Law School	Cambridge, Massachusetts	Sept. 1966	June 1969	J.D.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1969-1970: Steptoe & Johnson
1250 Connecticut Avenue, N.W.
Washington, D.C.

1970-1971: Office of Economic Opportunity
Office of Legal Services
1200 19th Street, N.W.
Washington, D.C.

1971-present: LeBoeuf, Lamb, Leiby & MacRae
520 Madison Avenue
New York, New York 10022

1981-present: Sole Proprietor
Lovejoy Interiors (non income-producing)
520 Madison Avenue
New York, New York 10022

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards**: **List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

N/A

9. **Bar Associations**: **List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

American Bar Association Antitrust Section

Council Member 1985 - Present
Chairman, Civil Practice and Procedure Committee 1982- 1985
Co-Chairman, Illinois Brick Task Force 1983-1984
(Member since approximately 1977)

New York State Bar Association

Member, New York State Bar Association House of Delegates (1984)
Chairman, Antitrust Law Section 1983-1984
Chairman, Antitrust Law Section Civil Practice and Procedure Committee 1982-1983
Member, Action Unit No. 6 1985-1986
Action Unit No. 6 was formed to study the undue delay and cost of the civil litigation process in New York State courts. The Action Unit made recommendations for changes in case management, discovery, motion practice, trial scheduling, conduct of trials and the appellate process, which recommendations were adopted by the New York State Bar Association House of Delegates in 1985.
(Member since approximately 1982)

Association of the Bar of the City of New York (and its Trade REgulation Committee)

Member, 1984-1987

American Law Institute

Member, 1983 or 1984 - present

New York Bar Foundation

Member, 1986 - present

Council of New York Law Associates

Member, approximately 1975 - approximately 1978

Committee on the Pretrial Phase of Civil Cases
of the Judicial Council of the Second Circuit

Member, January 1984 - May 1986

Federal Bar Council

Vice President 1984-1985
Trustee 1978-1983
(Member since 1978)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Courts	Dates of Admission
United States District Court	
District of Columbia	11/4/69
Southern District of New York	8/28/74
Eastern District of New York	8/28/74
Western District of New York	1/19/81
United States Circuit Courts	
District of Columbia Circuit	12/10/69
Second Circuit	10/15/75
United States Supreme Court	2/25/80

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Published material: see attached copies of:

(1) "Amendments to the Federal Rules of Civil Procedure (August 1983)," Practicing Law Institute Program on Current Problems in Federal Civil Practice (October 27-28, 1983)

(2) Report of the ABA Antitrust Section Task Force to Review Proposed Legislation to Repeal or Modify Illinois Brick (1984)

(3) Draft Comments on the Advisory Committee's Proposed 1983 Amendments to the Federal Rules of Civil Procedure. (I was the primary draftsman of these comments, with assistance from other members of the ABA Section of Antitrust Law Civil Practice and Procedure Committee.)

Listed below are my speeches and testimony on issues involving constitutional law or legal policy. I have not retained copies of the speeches; copies of the testimony (where available) are attached.

Lectures and Programs

Lecturer on Civil Uses of RICO, ALI-ABA Program on Civil Practice and Litigation in Federal and State Courts (San Francisco, August 1985)

Lecturer on "Racketeering Injury: Use of Civil RICO in Antitrust Cases," Practicing Law Institute Program on Civil RICO (New York City, 1984)

Lecturer on Proposed Amendments to the Federal Rules of Civil Procedure, Practicing Law Institute Program on Current Problems in Federal Civil Practice (New York City, October 27, 1983)

Organizer and moderator of program "Deregulation: Its Meaning and Implications for Antitrust Enforcement" (New York State Bar Association Antitrust Law Section, New York City, January 26, 1983)

Lecturer on Proposed Amendments to the Federal Rules of Civil Procedure, ALI-ABA Program on Civil Practice and Litigation in Federal and State Courts (New York City, June 10-12, 1982)

Organizer and moderator of workshop on "Techniques for Effective Pretrial and Trial of Antitrust Cases" (New York State Bar Association Antitrust Law Section, New York City, January 27, 1982)

Lecturer on the Equal Access to Justice Act and other new federal legislation, ALI-ABA Program on Civil Practice and Litigation in Federal and State Courts (Puerto Rico, November 12-14, 1981)

Organizer and moderator of workshop on "Procedural Pitfalls in Antitrust Litigation" (New York State Bar Association Antitrust Law Section, New York City, January 21, 1981)

Testimony

I have testified regarding the advisability of enacting legislation to change federal pretrial procedures, and legislation to increase the numbers of those who may sue to recover antitrust damages, as follows:

Testified before, and submitted position paper to, the Advisory Committee on Civil Rules of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, at Hearings on Proposed Amendments to the Federal Rules of Civil Procedure (Washington, D.C., October 16, 1981). (I did not retain a copy of the paper; my testimony was similar to the Draft Comments attached hereto, referred to in subparagraph (3) on page 5 of this response.)

Testified as the American Bar Association Section of Antitrust Law witness regarding proposed federal legislation to permit indirect purchasers to sue for treble damages, as follows:

> Testimony before the United States Senate Committee on the Judiciary regarding the proposal contained in S.915 ("Taxpayer Antitrust Enforcement Act of 1983") (May 16, 1984)(the testimony is attached hereto)
>
> Testimony before the United States House of Representatives Subcommittee on Monopolies and Commercial Law regarding proposals contained in H.R. 2244 ("Antitrust Fairness Amendments") (March 18, 1984)(the testimony is attached hereto)

13. Health: What is the present state of your health? list the date of your last physical examination.

Excellent. April 1987.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. **Citations**: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

N/A

16. **Public Office**: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

I did not serve as clerk to a judge. From August 1969 to May 1970, I was a litigation associate at Steptoe & Johnson, a general practice law firm now located at 1250 Connecticut Avenue, N.W., Washington, D.C. While there, I worked on litigation involving contract disputes and trade regulation matters.

From May 1970 to March 1971, I was employed as an attorney at the Office of Economic Opportunity ("OEO") Office of Legal Services at 1200 19th Street N.W., Washington, D.C. The Office of Special Counsel was created to represent the poor before federal agencies; that program was terminated a few months after I was employed by OEO, and thereafter I functioned as a special assistant to the Director of the Office of Legal Services, Terry Lenzner.

From April 1971 to the present, I have been a litigator at LeBoeuf, Lamb, Leiby & MacRae, 520 Madison Avenue, New York, New York. I was an associate until 1978, at which time I became a partner.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

My practice has consisted of general commercial litigation, most of which has been in federal courts. Until about three years ago, roughly eighty percent of my litigation practice was antitrust-related, and the remaining twenty percent consisted of Title VII litigation and general commercial litigation. For the past three years, approximately one-third of my litigation practice has been antitrust litigation, one-third has been commercial litigation, and one-third has been products liability litigation.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

I have specialized in antitrust litigation and counselling and, very recently, in products liability litigation. My typical clients in antitrust litigation and counselling have been St. Regis Paper Company, Lloyd's Underwriters, International Telephone and Telegraph Corporation, Delmarva Power & Light Company and smaller companies such as the Bridgeport Hydraulic Company. My clients in products liability (asbestos) litigation are two subsidiaries of ASARCO, Lac d'Amiante du Quebec and CAPCO. In Title VII litigation I have represented ITT World Communications, Inc., Russell Stover Candies, Inc., and a professor at Hofstra University, Natalie Allon.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I appeared in court occasionally to frequently.

2. **What percentage of these appearances was in:**

(a) federal courts;
(b) state courts of record;
(c) other courts.

Federal courts: approximately ninety-five percent
State courts of record: approximately five percent
Other courts: -0-

3. **What percentage of your litigation was:**

(a) civil;
(b) criminal.

Civil: Close to 100%
Criminal: For the past ten months I have been defending Lloyd's Underwriters and brokers in a multi-state investigation being conducted by five state Attorneys General; the investigation is described by the prosecutors as both civil and criminal. Prior thereto, approximately two percent of my time was spent in criminal litigation.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

None.

5. **What percentage of these trials was:**

(a) jury;
(b) non-jury.

N/A.

18. **Litigation**: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Since December 1986, I have been defending underwriters and brokers at Lloyd's and two British insurance companies (Terra Nova and the Excess Insurance Company) in a multi-state investigation by five state Attorneys General of whether the "liability crisis" in the United States was caused in part by antitrust violations. The investigators are examining conduct by insurers and reinsurers over approximately the past fifteen years, to determine the causes of the recent dramatic rise in premiums for liability insurance and reinsurance in the United States and to determine the cause of the current unavailability of some such insurance (e.g., for certain municipalities, day care centers and asbestos-removal companies). The focus of the inquiry is on whether the conduct under examination constituted concerted activity or monopolization (or misuse of monopoly power) in violation of state and federal laws. To date, testimony has been taken from over seventy individuals whom I represent and many others whom I do not represent.

The investigation is significant because the vast body of information being developed on the underwriting and marketing of insurance and reinsurance will assist in determining whether changes should be made in certain joint activities among insurers, as well as whether changes should be made in our tort recovery system. I have personally prepared each witness and have developed and implemented the strategy for the defense of our clients in discovery and in any eventual litigation. I have dealt extensively with the prosecutors, and have negotiated several agreements with them.

The investigations began in approximately early 1986. No complaint has yet been filed, although over 100 companies and individuals have been subpoenaed and have given testimony and produced documents.

Counsel for each of the prosecutors are:

Lloyd Constantine
George Sampson
Office of the State Attorney General
120 Broadway
26th Floor, Room 20
New York, NY 10271
(212) 341-2275
(212) 341-2277

Jeff White[1]
Assistant Attorney General
State of Texas
P.O. Box 12548
State Capitol
Austin, Texas 78711
(512) 463-2185

Jesse Markham
Assistant Attorney General
Department of Attorney General
Room 1902
John McCormick Building
1 Ashburton Place
Boston, Massachusetts 01208
(617) 727-5575

Kathleen M. Mahoney
Special Assistant to the Attorney General
2nd Floor, Ford Building
117 University Avenue
St. Paul, Minnesota 55155
(612) 296-2619

Thomas P. Dove
Deputy Attorney General
State of California
Department of Justice
350 McAllister Street
Room 6000
San Francisco, California 94102
(415) 557-2544

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[1] Mr. White's predecessor, Tom King, who has left the Texas Attorney General's office, has been my adversary for longer than Mr. White. Mr. King can be reached at: Cowles & Thompson, 4000 Interfirst Plaza, 901 Main Street, Dallas, Texas 75203 (214) 670-1100.

Counsel for certain other respondents are:

Alan H. Silberman
Sonnenschein, Carlin, Nath
& Rosenthal
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8103

Lewis J. Robinson
Travelers Insurance Company
Law Department (3-38PS)
One Tower Square
Hartford, Connecticut 06183-1050
(203) 277-4434

John DeQ. Briggs
Howrey & Simon
Suite 900
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-4793
(202) 383-7015

Robert Mittelstaedt
Pillsbury, Madison & Sutro
Suite 1900
225 Bush Street
San Francisco, California
(415) 983-1619

Bartlett H. McGuire
Davis Polk & Wardwell
1 Chase Manhattan Plaza
New York, NY 10005
(212) 530-4000

Maureen McGuirl
Gibson, Dunn & Crutcher
333 South Grand Avenue
Los Angeles, California 90071
(213) 229-7000

2. Since July 1986, I have been in charge of defending an asbestos mining company (Lac d'Amiante du Quebec) in all of its litigation, nationwide, relating to liability for the cost of removing from buildings products containing asbestos. Lac d'Amiante du Quebec is a defendant in over 70 such cases, one of which has been certified as a national class action on behalf of all secondary schools in the United States. In re Asbestos School Litigation, Master File No. 83-0268 (E.D. Pa. Kelly, J.)

(The citation to the class certification decision is: In re Asbestos School Litig., 107 F.R.D. 215 (E.D. Pa. 1985), later proceeding, 620 F. Supp. 873 (E.D. Pa. 1985), later proceeding, In re Asbestos School Prods. Liab. Litig., 606 F. Supp. 713 (J.P.M.L. 1985) and aff'd in part and vacated in part, In re School Asbestos Litig., 789 F.2d 996 (3d Cir. 1986), cert. denied, Celotex Corp. v. School Dist., 107 S. Ct. 182 (1986), cert. denied, National Gympsum Co. v. School Dist., 107 S. Ct. 318 (1986). Several motions for class certification in other cases are pending (on behalf of all colleges and universities, all hospitals, and certain lessors of property to the United States government). The cases are significant for a number of reasons. First, they present numerous novel legal issues, the resolution of which could significantly affect how suppliers of raw materials and manufacturers do business in the future, and what insurance will be available in the future. Second, the pattern of compensation in these cases is likely to prompt reexamination of whether our tort recovery system is the best way of compensating victims of toxic torts and punishing the sellers of toxic products. In these cases there is a possibility that the payment of compensatory damages and substantial punitive damages, along with high defense costs, will exhaust funds available to pay claims, leaving some future claimants with no recourse. If this result is generally perceived to be unfair, it could prompt changes in, for example, the treatment of punitive damages or in our fault-based system of compensation to those injured by toxic torts.

My participation in the cases has been to develop and implement a strategy for defending Lac d'Amiante du Quebec in all of the cases, including formulating positions regarding whether classes should be certified (and, if so, how to define them) and in which forums to press resolution of novel issues of law important to my client.

To date, plaintiffs have won almost all of the asbestos property damage cases that have been tried against other defendants. We have been successful in negotiating voluntary dismissals of our client in fourteen cases to date, without payment of any money, and we have not yet tried any cases.

Listed below are counsel for the parties in the national secondary school class action and the Texas school board cases (the latter are the only cases that our client came close to trying) (Dayton Independent School District, et al., v. United States Gypsum Co., et al., C.A. B-81-277-CA, consolidated with B-81-193-CA, Fisher, J.)

National Schools Class Action

Counsel for plaintiffs:

Daniel Speights
304 Lee Avenue
Hampton, SC 29924
(803) 943-4444

Stanley Levy
Levy, Phillips & Konigsberg
90 Park Avenue
New York, NY 10016
(212) 982-1480

Allan Kanner
1616 Walnut Street
Philadelphia, PA 19103
(215) 546-6661

Frank Daily
411 E. Wisconsin Avenue
Milwaukee, WI 53203-4497
(404) 277-5000

Ronald Motley
174 E. Bay Street, Suite 100
Charleston, SC 29402
(803) 577-6747

David Berger
1622 Locust Street
Philadelphia, PA 19103
(215) 875-3000

Alvin Lewis, Jr.
221 E. Chestnut Street
Lancaster, PA 17602
(717) 299-7254

Alan Levin
320 Walnut Street,
Suite 600
Philadephia, PA 19106
(215) 592-1500

Herbert Newberg
Newberg & Newberg
200 Lippincott Bldg.
227 S. 6th Street
Philadelphia, PA 19106
(215) 922-4740

Robert Sweeney
C&S Building, Suite 950
55 Public Square
Cleveland, OH 44113
(216) 696-0606

Counsel for defendants:

Ralph Brenner
3 Parkway, 20th Floor
Philadelphia, PA 19102
(215) 563-0650

Gene Locks
1500 Walnut Street, 21st Floor
Philadelphia, PA 19102
(215) 893-5400

Patrick T. Ryan
Drinker, Biddle & Reath
1100 PNB Building
Philadelphia, PA 19107
(215) 998-2700

Steven Waxman
230 S. Broad Street,
17th Floor
Philadelphia, PA 19102
(215) 545-4900

Arthur Makadon
30 S. 17th Street, 20th Floor
Philadelphia, PA 19103
(215) 564-1800

Shepard Remis
Kenneth Cogen
Goodwin, Proctor & Hoar
Exchange Place
Boston, MA 02109
(617) 570-1000

John Mason
Dechert, Price, & Rhoades
3400 Center Square West
Philadelphia, PA 19102
(215) 972-3400

Richard McMillan
1005 Pennsylvania Avenue N.W.
Washington, D.C. 20004-2505
(202) 624-2500

Lowell Reed
211 S. Broad Street
Philadelphia, PA 19107
(215) 875-4000

Richard Picini
Budd, Larner, Gross, Picillo
Rosenbaum, Greenberg & Sade
1414 PSFS Building
Philadelphia, PA 19107
(215) 625-0190

Joseph Fineman
1609 One East Penn Square
Philadelphia, PA 19107

Charles Dorkey, III
660 Madison Avenue
New York, NY 10021
(212) 207-1200

Kent Bernard
Pfizer, Inc.
235 E. 42nd Street
New York, NY 10017
(212) 573-7760

Jonathan Wheeler
1412 PSFS Building
Philadelphia, PA 19107
(215) 592-9800

Norman Haase
Dunn, Hasse, Sullivan &
Mallon
326 West State Street
(215) 565-9600

Alan Klein
Drinker, Biddle & Reath
1100 PNB Building
Philadelphia, PA 19107
(215) 998-2700

Richard Brown
George E. Lieberman
Morgan, Lewis & Bocktus
2000 One Logan Square
Philadelphia, PA 19103
(215) 963-5000

Daniel Ryan
Marshall, Dennehey,
Warner, Coleman & Goggin
1515 Locust Street
Philadelphia, PA 19102
(215) 893-3800

R. Cornelius Danaher
60 Washington Avenue
Hartford, CT 06106
(203) 247-3666

Charles Bruton
1600 Market Street
Philadelphia, PA 19103
(215) 751-2000

Arthur Rainey
3400 Centre Square West
Philadelphia, PA 19102
(215) 972-3400

John F. Kent
2900 Two Mellon Bank Center
Philadelphia, PA 19102-2399
(215) 564-6688

Barbara Pennell
410 Public Ledger Bldg.
Philadelphia, PA 19106

Michael Otchet
Armstrong World Industries
Liberty & Charlotte Streets
Lancaster, PA 17064
(717) 397-0611

Robert Corbin
1818 Market Street, Suite 3100
Philadelphia, PA 19103
(215) 563-1000

Robert Reeder
1900 Market Street, 3rd Floor
Philadelphia, PA 19103
(215) 665-2000

William Jones
601 DeKalb Street, Suite 200
Norristown, PA 19404
(215) 279-5300

Jerome Hirsch
919 Third Avenue
New York, NY 10022
(212) 735-3000

Richard M. Jordan
1234 Market Street, 17th Floor
Philadelphia, PA 19107
(215) 854-7000

William Winning
606 E. Baltimore Pike
Media, PA 19063
(215) 565-4322

Walter Jenkins
1515 Market Street,
19th Floor
Philadelphia, PA 19102
(215) 563-9811

Peter Liebert, III
1200 One Franklin Plaza
Philadelphia, PA 19103
(215) 564-5800

Ellen Forman
Goldfine & Joseph
Packard Bldg. 17th
Philadelphia, PA. 19102
(215) 977-9800

F. James Gallo
Post & Schell
1800 JFK Blvd. 19th Fl.
Philadelphia, PA 19103
(215) 587-1000

Mitchell Pinsley
1315 Walnut Street,
3rd Floor
Philadelphia, PA 19107
(215) 432-3838

Thomas Cunningham
1234 Market Street,
17th Floor
Philadelphia, PA 19107
(215) 854-7000

Edward Greer
Mesirov, Gelman, Jaffe,
Cramer & Jamieson
The Fidelity Bldg.
Philadelphia, PA 19109
(215) 893-5000

Stephen Springer
LaBrum & Doak
700 IVB Building
Philadelphia, PA 19103
(215) 561-4400

Irene Warshauer
Anderson, Russell, Kill & Olick
666 Third Avenue
New York, NY 10017
(212) 850-0700

Lawrence T. Hoyle
1424 Chestnut Street
Philadelphia, PA 19102
(215) 963-6000

Barry Klayman
Wolf, Block, Schor & Solis-Cohen
Packard Building, 12th Floor
Philadelphia, PA 19102
(215) 977-2000

David Kott
550 Broad Street
Newark, N.J. 07102
(201) 622-4444

John Mason
Dechert, Price, & Rhoades
3400 Center Square West
Philadelphia, PA 19102
(215) 972-3400

Edward Madeira
Pepper, Hamilton &
Scheetz
The Fidelity Bldg.
Philadelphia, PA 19109
(215) 893-3000

Theodore Lunine
Bennett, Bricklin,
Saltzburg & Fullem
1800 IVB Bldg.
Philadelphia, PA 19102
(215) 561-4300

John R. Kelley
Krusen, Evans & Byrne
Public Ledger Building,
5th Floor
Philadelphia, PA 19106
(215) 923-4400

Joseph David
1800 JFK Building,
7th Floor
Philadelphia, PA 19103

Texas School Board Cases

Counsel for plaintiffs:

Martin Dies
1009 West Green Ave.
Orange, TX 77630
(409) 883-4394

Richard C. Hile
Tonahill, Hile, Leister & Jacobellis
P.O. Box 670
Jasper, TX 75951
(409) 384-2502

Robert C. Watts
Bracewell & Patterson
29 South Tower
Pennzoil Place
711 Louisiana
Houston, TX 77002
(713) 223-2900

Counsel for defendants:

Michael L. Baker
Strong, Pipkin, Nelson &
Bissell
14th Floor, San Jacinto Bldg.
595 Orleans
Beaumont, TX 77701-3255
(409) 835-4581

Michael L. Hardy
Barbara J. Arison
Thompson, Hine & Flory
1100 National City Bank Bldg.
Cleveland, OH 44114
(216) 566-5500

Paul J. Holmes
Paul J. Holmes, P.C.
P.O. Box 830
Beaumont, TX 77704
(409) 832-8382

Patricia S. Greek
Andrews & Kurth
4200 Texas Commerce Tower
Houston, TX 44002
(413) 220-4184

Shepard M. Remis
Goodwin, Proctor & Hoar
Exchange Place
Boston, MA 02109
(617) 570-1000

James H. Powers
Holtzman & Urquhart
900 Two Houston Center
909 Fannin
Houston, TX 77010
(713) 739-0000

Gail C. Jenkins
Benckenstein, Novell,
Bernsen & Nathan
P.O. Box 551
Beaumont, TX 77704
(409) 833-4309

O.J. Weber
Mehaffy, Weber, Keith &
Gonsoulin
P.O. Box 16
Beaumont, TX 77704
(409) 835-5011

Wendell C. Radford
Benckenstein, Oxford,
Radford & Johnson
P.O. Box 150
Beaumont, TX 77704
(409) 833-9182

Stephen S. Andrews
Woodard, Hall & Primm
4700 Texas Commerce Tower
Houston, TX 77002
(713) 221-3800

Edward H. Green
Weller, Wheelus & Green
P.O. Box 350
Beaumont, TX 77704-0350
(409) 838-0101

3. From 1985 to 1986, I defended the M.A. Hanna Company, Hanna Itasca Company and Itasca Pellet Company in a suit by Minnesota Power to recover approximately $20 million in past and future charges for electric power that defendants did not take because the plant that contracted to take the power went out of business. Minnesota Power v. Butler Taconite Project, Inland Steel Mining Co., Inland Steel Co., Itasca Pellet Co., Hanna Itasca Co. and The Hanna Mining Co., File No. 155756 (District Court, Sixth

Judicial District, County of St. Louis, State of Minnesota, Jack L. Litman, J.).

The case was significant because it required balancing (1) the need of an electric power company to rely on "minimum demand" provisions in customer agreements in planning its capacity and contracting with others to purchase power, and (2) the needs of power customers in a depressed industry (steel) to retain flexibility to lower their costs when production is low.

I determined the strategy for defending the case, including deciding which counterclaims to pursue and which motions to press early in the case to bring about its prompt resolution. After depositions, the filing of several motions and the court's hearing and denial of plaintiff's motion for a temporary injunction restraining allegedly fraudulent conveyances, we were successful in settling the case.

Counsel for Minnesota Power was:

R. Scott Davies
Briggs & Morgan
2400 IDS Center
Minneapolis, MN 55402
(612) 339-0661

Co-counsel were:

Robert S. Lee
Mackall, Crounse & Moore
1600 TCF Tower
121 South Eighth Street
Minneapolis, MN 55402
(612) 333-1341
(local counsel for the Hanna-related defendants)

Norman R. Carpenter
Faegre & Benson
2300 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402
(612) 371-5320
(local counsel for the Inland Steel-related defendants)

4. From 1981 to 1983, I represented defendant Delmarva Power & Light Company in two companion actions brought by four Delaware municipalities. In these actions, the municipalities charged, among other things, that my client had monopolized the distribution and sale of electric power at retail and at wholesale in violation of Section 2 of the Sherman Act. City of

Newark, Delaware, et al., v. Delmarva Power & Light Co., C.A. 77-254 and City of New Castle, Delaware v. Delmarva Power & Light Co., C.A. 77-296 (D. Del., Stapleton, J.). Plaintiffs believed that defendant had sold electric power to plaintiffs at unreasonably high and discriminatory wholesale rates in relation to the rates charged to defendant's retail customers, and had denied them reasonable access to transmission facilities.

The case was significant because of the important public policy issues raised by attempts by municipalities and others to compete with private utilities in the distribution and sale of power, and the complexity of the issues involved (including setting appropriate rates and providing reasonable access to pooling and transmission facilities). The case was settled by the entry of a decree providing, among other things, for prior notice to the plaintiffs of defendant's future proposed wholesale rate changes, along with access to defendant's relevant data and work papers, and an opportunity to meet with defendant prior to defendant submitting the changes to the Federal Energy Regulatory Commission.

I took over the defense of the action for its last two years. My work included taking and defending expert witness depositions, litigating discovery disputes, and filing and responding to dispositive motions. I also worked out the strategy for settling the case, which avoided costly litigation without impinging on defendant's business practices.

Counsel for plaintiffs were:

John H. Korns
Cladouhos & Brashares
1750 New York Avenue, N.W.
Washington, D.C. 20006
(202) 783-6111

Thomas G. Hughes
O'Donnell & Hughes, P.A.
1207 King Street
P.O. Box 2214
Wilmington, Delaware 19899
(302) 658-7501

Charles S. Maddock
Cooch & Taylor
Marine Midland Plaza
Suite 1000, 824 Market Street Mall
P.O. Box 1680
Wilmington, Delaware 19899-1680
(302) 652-3641

Co-counsel for defendant were:

Dale G. Stoodley
Delmarva Power & Light Co.
800 King Street
Wilmington, Delaware
(302) 429-3757

E. Dickinson Griffenberg
350 Delaware Trust Building
Wilmington, Delaware 19899
(302) 658-6771

5. From 1981 to 1983 I defended ITT World Communications, Inc., ITT Domestic Transmission Systems, Inc. and United States Transmission Systems, Inc. in a Title VII action brought by Mary Warren, who sought to represent a class of women who had purportedly suffered sexual discrimination in employment. Mary Warren v. ITT World Communications, Inc., ITT Domestic Transmission Systems, Inc. and United States Transmission Systems, Inc., 81 Civ. 1277 (S.D.N.Y., Sprizzo, J.).

Because of the high cost of litigating such class actions, it is often important to the parties and to judicial administration to determine at an early stage whether class certification is appropriate. After discovery from plaintiff and others, I concluded that plaintiff was probably not an adequate class representative because her claims were not typical of the alleged claims of the class. After briefing and oral argument regarding all facets of plaintiff's adequacy as a class representative, I was successful in defeating class certification. The opinion is reported as Mary Warren v. ITT World Communications, Inc., et al., 95 F.R.D. 425 (S.D.N.Y. 1982). The case settled shortly thereafter.

Counsel for plaintiff was:

Raymond F. Gregory
400 Park Avenue
New York, NY 20022
(212) 753-9797

6. From 1979 to 1982, I was co-counsel with the American Civil Liberties Union in a Title VII action in which we represented a plaintiff who claimed that Hofstra University had discriminated against her in denying her tenure as a Sociology professor. Natalie I. Allon v. Board of Trustees, Hofstra University, 78 Civ. 1410 (S.D.N.Y., Costantino, J., and, subsequently, Bartels, J.). The case was tried with a companion action relating to the same alleged discrimination, in which action the Hofstra University Chapter of the American Association of University

Professors was the plaintiff and Hofstra University was the defendant.

The case was significant because historically it has been very difficult for plaintiffs to establish that discrimination violative of Title VII occurred in the tenure process, in part because of the difficulty of comparing the scholarship and teaching credentials of two individuals, particularly where, as in the Allon case, the professors are in different disciplines. We believe that we had (1) located individuals capable of making such comparisons and (2) assembled a convincing case that plaintiff's scholarship and teaching credentials were superior to those of men who were granted tenure in other departments, and that the needs of the departments for additional tenured professors were similar.

I shaped the discovery and litigation strategy while co-counsel was on a leave of absence, and shared the representation equally with co-counsel upon her return. That work, before and after co-counsel's leave of absence, included litigation over discovery issues, taking depositions, preparation of testimony for trial (including expert testimony) and trial of the case to Judge Bartels until the case was settled after five days of trial (trial dates: June 8-11 and June 15, 1982).

Before trial, plaintiff was injured in an automobile accident, and has remained in a coma since then; we tried the case at the request of plaintiff's parents, who wished to continue the litigation notwithstanding that it was highly unlikely that plaintiff could recover sufficiently to teach. The case was settled by a $50,000 payment by defendant to our client and the establishment of a permanent, annual scholarship in the amount of $3,000 in plaintiff's name at Hofstra University.

Counsel for Hofstra University were:

Barry J. Mandel
Deborah R. Linfield
Baer, Marks & Upham
805 Third Avenue
New York, NY 10022
(212) 702-5700

Co-counsel for plaintiff Natalie I. Allon was:

Margaret L. Moses
[formerly with the American Civil Liberties Union in New York City; her present address and telephone number are unknown to me.]

Counsel for plaintiff Hofstra University Chapter of the American Association of University Professors was:

Robert A. Goldstein
Bizar, D'Alessandro, Shustak & Martin
485 Madison Avenue
New York, NY 10022
(212) 725-7200

7. From 1976 to 1980, I represented International Telephone & Telegraph Corporation and ITT World Communications, Inc. in their treble damage, antitrust action against Allied Maintenance Corporation and others. International Telephone & Telegraph Corp., et al. v. Allied Maintenance Corp., et al., 76 Civ. 1866 (S.D.N.Y., Cannella, J. and, subsequently, Brieant, J.). Defendants had allegedly agreed among themselves to allocate customers and to fix the prices for building maintenance services in New York City, causing their customers to pay inflated prices for those services. The case was consolidated for discovery purposes with a similar action brought on behalf of other customers.

The case was significant because it involved wide-spread price-fixing and because the amount of any overcharge was difficult to determine. The case also required consideration of the fact that defendants had relied upon an opinion of counsel that their conduct did not violate the antitrust laws, the correctness of which opinion was slowly eroded over time by judicial decisions.

I conducted and responded to discovery on behalf of ITT and thereafter negotiated a settlement in which my client received $175,000.

Counsel for defendants were:

Fred A. Freund
Kaye, Scholer, Fierman, Hays & Handler
425 Park Avenue
New York, NY
(212) 407-8000

Ira Postel
Shea, Gould, Climenko & Kramer
330 Madison Avenue
New York, NY 10017
(212) 370-8000

John A. Young
Graubard, Moskovitz, McGoldrick, Dannett & Horowitz
600 Third Avenue
New York, NY
(212) 818-8800

Jerome J. Londin
Carro, Spanbock, Londin, Rodman & Fass
1345 Avenue of the Americas
New York, NY
(212) 757-2400

Malcolm A. Hoffman
12 East 41st Street
New York, NY
(212) 685-0535

William W. Prager
Spiro, Felstiner, Prager & Treeger
270 Madison Avenue
New York, NY

Theodore M. Wolkof
Ash & Miller
1290 Avenue of the Americas
New York, NY

S. Edward Orenstein
750 Third Avenue
New York, NY 10013
(212) 687-1166

Robert G. Morvillo
Obermaier, Morvillo & Abramowitz
Suite 1500
1120 Avenue of the Americas
New York, NY 10036
(212) 221-1414

Ira W. Berman
Zissu Berman Halper & Gumbinger
450 Park Avenue
New York, NY 10022
(212) 371-3900

Martin London
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY
(212) 373-3000

Richard Davis
Weil, Gotshal & Manges
767 Fifth Avenue
New York, NY 10022
(212) 310-8000

Charles G. Moerdler, Esq.
Strook & Strook & Lavan
7 Hanover Square
New York, NY
(212) 806-5400

8. From 1976 to 1978 I[2] defended St. Regis Paper Company in an antitrust treble damage class action brought against 23 manufacturers of folding cartons. In re Folding Carton Antitrust Litigation, M.D.L. 250 (N.D. Ill., Will and Robson, JJ.). Plaintiffs' action followed criminal indictments, and was based upon voluminous testimony and documents providing detailed proof of a longstanding history of price-fixing in the industry.

The significance of the case, apart from the impact of the conspiracy on prices of a product used by everyone, was that the damage calculations involved complex issues of product market definition and how overcharges on certain products can impact on prices of other products.

I defended our client at depositions, drafted motions, and generally developed a strategy for defending and ultimately settling the case as against our client. The evidence, which included one employee's detailed diary of numerous price-fixing agreements, caused every defendant to settle. Our client settled early and paid a relatively low figure in settlement ($6.9 million).

Lists of counsel for plaintiffs and defendants are attached hereto as Rider 18-8.

9. From 1972 to 1977, I defended (with my then-partner Richard Wachtel) St. Regis Paper Company in a national antitrust class action seeking treble damages for purported fixing of the terms and conditions of sale in the plywood industry. In re Plywood Antitrust Litigation, M.D.L. 159 (E.D. La., Pointer, J.).

---

[2] Although my senior partner, Richard Wachtel, was nominally in charge of the case, I handled most of the defense for our client because Mr. Wachtel was often unavailable at the time due to illness and the press of other cases.

The significance of this case is that it decided the lawfulness of, among other things, a manufacturer in an "auction" market using base point pricing and industry tables of estimated weights as two components of pricing.

I, with my partner's assistance, developed a strategy for distinquishing our client from other defendants, which led to a low settlement in which our client paid $22,500.

Lists of counsel for plaintiffs and defendants are attached hereto as Rider 18-9.

10. From 1972 to 1976 I represented Bridgeport Hydraulic Company and its affiliated companies, and Hackensack Water Company and Spring Valley Water Company, in treble damage actions alleging bid rigging by the major manufacturers of cast iron pipe. Bridgeport Hydraulic Company, et al. v. American Cast Iron Pipe Company, et al., C.A. 72-695 (N.D. Ala., Pointer, J.). There was little or no evidence of the alleged conspiracy other than a pattern of bidding which our economic consultants believed evidenced a bid rigging conspiracy.

The case was significant because of the importance of the industry involved, and the importance of free competition in the bidding process. I believe that our development of evidence favorable to plaintiffs led to the eventual settlement of the case on terms favorable to our clients.

After I conducted extensive discovery and motion practice, the case was settled by a payment of $354,800 to our clients.

Counsel for defendants were:

W. Donald McSweeney
Roger Pascal, Esq.
Schiff Hardin & Waite
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

Harold F. Baker
Alan Wiseman
Howrey & Simon
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-4793
(202) 783-0800

John L. Conlon
Hopkins & Sutter
Three First National Plaza
Chicago, Illinois 60602

(312) 558-6600

Robert McDavid Smith
Lange, Simpson, Robinson and Sommerville
1700 First Alabama Bank Building
Birmingham, Alabama 35203
(205) 250-5000

William H. Mills
Rogers, Howard, Redden & Mills
1033 Frank Nelson Building
Birmingham, Alabama 35203
(205) 322-0457

Ollie L. Blan, Esq.
Spain, Gillon, Riley, Tate & Ashley
800 First National Building
Birmingham, Alabama 35203
(205) 328-4100

A.J. Noble, Jr.
Thomas, Taliaferro, Forman, Burr & Murray
1600 Bank for Savings Building
Birmingham, Alabama 35203
(205) 251-3000

Co-counsel was:

Robert Collins
Balch & Bingham
600 North 18th Street
P.O. Box 306
Birmingham, Alabama 35201
(205) 251-8100

19. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In addition to the litigation described in response to question 18 herein, I have given clients extensive advice relating to compliance with the antitrust laws and compliance with Title VII of the Civil Rights Act of 1964. I have also been active in bar association activities relating to antitrust law (see response to question I.9 herein).

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

None other than those amounts due to me pursuant to the LeBoeuf, Lamb partnership agreement; a description of its severance arrangements is attached hereto as Rider II.1. It may be possible for me to negotiate a lump sum payment of the amounts due rather than to receive them over the time period specified in the LeBoeuf, Lamb partnership agreement.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I will resolve any potential conflict of interest by recusing myself or divesting assets, as may be appropriate, in accordance with applicable standards, including the ABA Model Rules of Professional Conduct and Code of Judicial Conduct. I will be aware of my past and current holdings, and those of members of my household, and will make the appropriate governmental filings relating thereto.

Categories of litigation likely to present potential conflicts of interest during my initial service are:

1. any litigation relating to asbestos
2. any litigation relating to whether the insurance "liability crisis" (unavailability or unaffordability of liability insurance) in the 1980's was caused by antitrust violations
3. any litigation involving the following entities:

Arab Banking Corporation
ASARCO
American Steamship Owners P&I Association
BankAmerica Corp.
Brookhaven NY UN Free Sch. Dist. No. 8
Butler Taconite Project

Long Beach, California
State of California
CAPCO
Capital Ceramics, Inc.
Chemical Bank NOW Account
Citibank Insured Market Rate Account
DG Bank
Delmarva Power & Light Company
East New York Savings Bank
Edgcomb
Edison Electric Institute
Estate of Mary Brown
Estate of Nora B. Wood
Excess Insurance Group
Exxon
Faberge & Cie.
First Investors Discovery Fund, Inc.
Gulf Power Co.
Home Insurance Co.
M.H. Hanna Company
Hanna Mining Co.
Home Reinsurance Co.
International Group of P&I Clubs
ITT Corporation and its subsidiaries
LLL&M - Monroe Village
Lac d'Amiante du Quebec
Lloyd's Underwriters or brokers
 (and Lloyd's of London)
The Committee of Lloyd's
The Council of Lloyd's
Lovejoy Interiors
Medical Liability Mutual Insurance Co.
Merrill Lynch Cash Management Account
Merrill Lynch Equi-Bond Fund
Merrill Lynch Ready Assets Trust
Munich American Reinsurance Co.
Munich Reinsurance Co.
National Association of Home Builders
New York Magazine
New York State Dormitory Authority
Niagara Mohawk Power Corp.
North American Reinsurance Co.
O & R
Paramount Group
Jorge Y. Ramos
Smart House Venture, Inc.
Sumitomo
Terra Nova
U.S. News and World Report

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

1986:

LeBoeuf, Lamb, Leiby & MacRae 520 Madison Avenue New York, New York 10022	235,842.00
New York State Dormitory Auth. Revs. Univ. Roch.	3,456.26
Exxon dividends	360.00
Lease Security Deposit interest	94.00
IRS interest	362.00
Rent on cottage, Sheffield, Mass.	5,950.00
Merrill Lynch Cash Management Account dividends (tax exempt)	916.77
Distribution of part of bequest from Estate of Mary Brown (grandmother)	27,500.00

1987 (through 12/18/87 unless otherwise stated):

LeBoeuf, Lamb, Leiby & MacRae 520 Madison Avenue New York, New York 10022	128,980.03
New York State Dormitory Auth. Revs. Univ. Roch.	3,456.26
Exxon dividends	380.00
Rent on cottage, Sheffield, Mass.	12,200.00
Merrill Lynch Cash Management Account (tax exempt)(as of 11/27/87)	1,790.54

Distribution of part of bequest from Estate of Mary Brown	46,000.00

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

See attached Financial Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Joint statement (includes candidate, spouse and dependent child)

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	85	000	00
U.S. Government securities—add schedule	-0-		
Listed securities—add schedule (A)	4	100	00
Unlisted securities—add schedule (B)	101	921	65
Accounts and notes receivable:			
Due from relatives and friends	-0-		
Due from others	-0-		
Doubtful	-0-		
Real estate owned—add schedule (C)	405	000	00
Real estate mortgages receivable	-0-		
Autos and other personal property	70	000	00
Cash value—life insurance	-0-		
Other assets—itemize: (D)	505	341	00
Total assets	1,171	362	60

LIABILITIES			
Notes payable to banks—secured	-0-		
Notes payable to banks—unsecured	-0-		
Notes payable to relatives	-0-		
Notes payable to others	28	000	00
Accounts and bills due	4	000	00
Unpaid income tax	13	000	00
Other unpaid tax and interest	3	600	00
Real estate mortgages payable—add schedule (E)	110	000	00
Chattel mortgages and other liens payable	-0-		
Other debts—itemize: Security deposit held for tenants	1	000	00
Total liabilities	159	600	00
Net worth			
Total liabilities and net worth	1,011	762	60

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	125	000	00
On leases or contracts	-0-		
Legal Claims	-0-		
Provision for Federal Income Tax	8	000	00*
Other special debt	-0-		

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

*This $8,000.00 is also listed among my liabilities, under "Unpaid income tax."

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

While employed at Steptoe & Johnson in 1969-1970, I represented two disadvantaged women, one in a nursing home and one a first-time offender charged with a narcotics violation. I devoted approximately forty hours to those representations.

I worked full-time, from May 1970 to March 1971, as an attorney in the Office of Economic Opportunity ("OEO") Office of Legal Services in Washington, D.C. In that capacity I assisted in the supervision of local legal services offices and drafted amicus curiae briefs to be filed on behalf of OEO clients.

From 1971 to the present, I have represented a number of disadvantaged persons, including an impoverished worker who appeared to have been defrauded by a correspondence school in hotel-motel management (I spent approximately twenty-five hours in that representation), and a female Sociology professor at Hofstra University who appeared to have been denied tenure because of her gender (I spent 890 hours in that representation). I have also assisted in arranging for recreational activities for homeless children (this work is ongoing; I have spent three hours on it to date).

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Yes; yes. I submitted my written application for consideration for nomination for a federal judgeship on February 6, 1987, to the Judicial Screening Committee of Senator Alfonse M. D'Amato. Thereafter, I was interviewed at length by members of that Screening Committee at two separate meetings of the committee. Several months later, I was interviewed by four attorneys in the Department of Justice Office of Special Counsel. After completing the FBI and ABA questionnaires, I was interviewed by the FBI and, subsequently, by the ABA representative for the Second Circuit.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

I believe that examples can be found of each of the types of judicial activism cited in this critique. In particular, in the thirty years since the historic decision in Brown v. Board of Education, courts have become increasingly active in institutional reform, in the name of performing their constitutional duty to redress violations of individual rights. Their actions have included such extreme ones as suspending all federal government welfare reimbursements to a state until the state hired 255 more social workers, and, in other cases, taking over the day to day administration of prisons, a task for which most judges would agree they are unsuited by training or by the time they have to devote to the job.

Consideration of the appropriateness of such actions has prompted discussion of the reasons underlying the original separation of powers, which are still valid today, and include (1) the fact that courts adjudicate individual grievances makes it unlikely that a court will have before it all of those who should be heard on a given issue, and hence there is a danger that a decision with sweeping effects could be based on inadequate information, (2) even if a judge could determine the most effective institutional remedy in a given case, it is unlikely that a judge can implement such remedies as well as could the other branches of government, and (3) unlike legislators and members of the executive branch, federal judges are appointed for life, and are therefore believed to be more susceptible to losing touch with the public, and thus, less suited to making important public policy choices. I believe that judges must be vigilant to these limitations of the judiciary, and strive whenever possible to find remedies in individual cases that do not intrude unnecessarily upon functions that other branches of government are better suited to perform.

ABA
AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET ABA 461

December 22, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: KIMBA M. WOOD
United States District Court
for the Southern District of New York

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Kimba Wood for appointment as Judge of the United States District Court for the Southern District of New York.

Our Committee is of the unanimous opinion that Kimba Wood is "Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

COMMITTEE ON THE JUDICIARY

VICTOR A. KOVNER
CHAIR
30 ROCKEFELLER PLAZA
NEW YORK, 10112-0150
(212) 489-8230

ROBERT D. BALIN
SECRETARY
30 ROCKEFELLER PLAZA
NEW YORK 10112-0150
(212) 489-8230

March 3, 1988

Senator Joseph Biden, Jr.
Senate Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Biden:

I am pleased to inform you that the Committee on the Judiciary of the Association of the Bar of the City of New York has found Kimba Wood APPROVED for appointment to the United States District Court for the Southern District of New York.

Very truly yours,

Victor A. Kovner

VAK/mlc

JACK T. CAMP, JR.

Birth:	October 30, 1943	Newnan, Georgia
Legal Residence:	Georgia	
Marital Status:	Married	Rose Elizabeth Thomas 2 chldren
Education:	1961 - 1965	The Citadel B.A. degree
	1965 - 1967	University of Virginia M.A. degree
	1970 - 1973	University of Virginia J.D. degree
Bar:	1973	Alabama
	1975	Georgia
Military Service:	1967 - 1970	United States Army Captain
Experience:	1973 - 1975	Cabaniss, Johnston, Gardner, Dumas & O'Neal Associate
	1975 - present	Glover & Davis Partner
	1975 - present	City Attorney City of Moreland, GA
	1977 - present	City Attorney City of Grantville, GA
	1985 - present	Associate City Attorney City of Peachtree, GA
Office:	10 Brown Street P.O. Box 1038 Newnan, Georgia 30264 404 253-4330	
Home:	1615 Handy Road Newnan, Georgia 30263	

To be United States District Judge for the Northern District of Georgia

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Jack Tarpley Camp, Jr.

2. Address: List current place of residence and office address(es).

   Residence: 1615 Handy Road
   Newnan, Georgia 30263

   Office: 10 Brown Street
   P. O. Box 1038
   Newnan, Georgia 30264

3. Date and place of birth.

   October 30, 1943, Newnan, Coweta County, Georgia.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to Rose Elizabeth Thomas, currently staff of Representative Newt Gingrich, 6351 Jonesboro Road, Suite E, Morrow, Georgia 30260, with employment to terminate January 31, 1988.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

1961-1965	The Citadel Charleston, SC	Bachelor of Arts with honors; major in History and minor in Mathematics
1965-1967	University of Virginia Charlottesville, VA	Master of Arts in History with major field of study being Recent American History
1970-1973	University of Virginia, Charlottesville, VA	Juris Doctor

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1966-1967	University of Virginia Charlottesville, VA	Student Assistant to Professor William H. Harbaugh, Graduate School of Arts and Sciences
1967-1970	U. S. Army	See below
1972-1973	University of Virginia Charlottesville, VA	Student Assistant to Neil Alford, Professor, University of Virginia Law School
1973-1975	Cabaniss, Johnston, Gardner, Dumas & O'Neal Birmingham, AL	Attorney with Cabaniss, Johnston firm, a forty-eight lawyer firm with a statewide practice.
1975-Present	Glover & Davis, PA 10 Brown Street Newnan, GA	Attorney, Shareholder and Vice President of Glover & Davis, P. A., a fifteen lawyer firm with offices in Newnan, Peachtree City and Atlanta, Georgia

7. Military Service: Have you ever had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

1965	Graduated from The Citadel as a Distinguished Military Student; commissioned in the U. S. Army Reserves as a Second Lieutenant, Military Intelligence Branch
1967	Entered Active Duty: U. S. Infantry Officers Basic Course, Fort Benning, Georgia; Counter-Intelligence Officers Course, Fort Holabird, Maryland

1968-1969 Promoted to rank of First Lieutenant; served with II Field Force Headquarters, U. S. Army, Vietnam

Promoted to Captain while on duty with U. S. Army, Vietnam. Awarded Bronze Star Medal, Vietnam Campaign Medal, Vietnam Service Medal, and National Defense Service Medal

1969-1970 Instructor, U. S. Army Intelligence School, Fort Holabird, Maryland

1970 Honorable Discharge from active duty

1970-1986 Inactive Reserves until I resigned my commission in 1986

Serial No. 05327888 (254-70-9968)

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

1965 The Citadel Honor Society (college fraternity which was the equivalent of Phi Beta Kappa).

1966-1967 Ford Foundation Fellowship, Graduate School of Arts and Sciences, University of Virginia, Charlottesville, Virginia

1969 Bronze Star Metal while serving with U. S. Army_Vietnam

1967-1970 Vietnam Campaign Medal, Vietnam Service Medal, and National Defense Service Medal

1987 Awarded "a v" rating in Martindale-Hubbell Law Directory

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

1973-Present Member of the American Bar Association

Member of the following Sections:

General Practice
Litigation

1973-Present Member of the Alabama State Bar

1975-Present State Bar of Georgia

Membership in the following sections:

- Bankruptcy Law
- Corporate and Banking Law
- General Practice and Trial Law
- Local Government Law

Service on the following State Bar committees:

- Judicial Procedure and Administration Committee
- Committee on Professionalism

1975-Present Member, Newnan-Coweta Bar Association

1977-Secretary-Treasurer Newnan-Coweta Bar Association

1978-President, Newnan-Coweta Bar Association

1978 Attended 5th Circuit Judicial Conference, Dallas, Texas

1987: Elected to the Board of Governors of the State Bar of Georgia

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

a. Organizations active in lobbying before public bodies:

1976-Present Newnan-Coweta Chamber of Commerce

1980 through 1982, served as member of the Board of Directors of the Newnan-Coweta Chamber of Commerce.

1987, elected to another three year term as a member of the Board of Directors of the Newnan-Coweta Chamber of Commerce.

1988, elected to Executive Committee of Board of Directors

b. Other organizations:

1977-Present	Newnan Presbyterian Church, served as a ruling Elder since 1978 (Clerk of the Session, 1985-1987);
1975-Present	Kiwanis Club of Newnan, former member of the Board of Directors;
1975-Present	Newnan Historical Society, former member of Board of Directors;
1975-Present	Georgia Trust for Historic Preservation;
1987-Present	National Trust for Historic Preservation;
1976-1987	Newnan Elks Club;
1977-1980	Newnan Country Club;
1970-1978	Reserve Officers Association;
1973-Present	The University of Virginia Alumni Association;
1965-Present	Alumni Association of the Citadel;
1975-Present	Atlanta Citadel Club;
1987	Georgia Republican Foundation.
1980-Present	Newnan-Coweta Association for Retarded Citizens
1978-Present	Newnan-Coweta Humane Society

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

1973	All trial and appellate courts of the State of Alabama.
1973	U. S. District Court for the Northern District of Alabama.
1975	All trial and appellate courts of the State of Georgia

1975 U. S. District Court for the Northern District of Georgia; subsequently admitted to the U. S. District Court for the Middle District of Georgia.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy to all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent health. Last physical examination was October 20, 1987; Dr. G. Truett Jarrard, PAPP Clinic, 16 Cavendar Street, Newnan, Georgia 30263; (404) 253-6615.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for ten ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not Applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1975-Present City Attorney for the City of Moreland, Georgia, appointed

1977-Present	City Attorney for the City of Grantville, Georgia, appointed
1985-Present	Associate City Attorney for City of Peachtree City, Georgia, appointed

Successful candidate for public office: None

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

   Not Applicable.

2. whether you practiced alone, and if so, the addresses and dates;

   Not Applicable.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

1973-1975:	Cabaniss, Johnston, Gardner, Dumas & O'Neal 1900 First National-Southern Natural Building Birmingham, Alabama 35203	Associate in the Litigation Dept. of the Cabaniss firm, a forty to fifty lawyer firm with a statewide practice
1975-Present:	Glover & Davis, P. A., P. O. Box 1038 Newnan, Georgia 30264	Attorney, member of Board of Directors (1981) and Vice President of the firm; attorney in charge of the Banking, Bankruptcy, and Commercial Law Section. Glover & Davis, P. A. is a fifteen lawyer firm with offices in Newnan, Peachtree City, and Atlanta, Georgia

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1973-1975 I assisted a senior partner of the firm, L. Vastine Stabler, Jr., with litigation, principally jury trial litigation. I also managed and tried cases of my own. I researched, briefed and argued appeals, including an appeal to the Supreme Court of Alabama.

The types of cases handled were general litigation with an emphasis on personal injury and Federal Employers Liability Act cases.

1975-1982 General civil practice with an emphasis on litigation and commercial law. As a general practitioner in Newnan, Georgia, I handled all types of legal matters, including criminal law, general trial practice, municipal law, trusts and estates, domestic relations, and other matters. During this period, I handled a substantial number of litigation matters, approximately twenty-five of which were tried to judgment. Approximately twenty percent of my cases were criminal matters, including capital felonies.

1982-Present My practice has become more specialized in the areas of banking and commercial law, commercial litigation, bankruptcy, and municipal practice. I have become the attorney primarily responsible for representing two national banks on all legal matters and the Federal Land Bank of Columbia on all legal matters in this area, as well as other commercial clients. I am local counsel for Fruehauf Corporation and represent Fruehauf and it's subsidiaries on all commercial matters in Georgia. My litigation practice has expanded in the Bankruptcy Courts, where I typically represent secured creditors.

I continue to handle substantial commercial litigation for the firm. Over the past several years, I have tried two jury trials of at least a week's duration involving commercial matters, as well as trials of shorter duration and numerous non-jury matters.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have ultimate responsibility for all legal matters involving the following clients:

First Union National Bank of Newnan (formerly First National Bank in Newnan), Newnan, Georgia

Peachtree National Bank, Peachtree City, Georgia

Farmers & Merchants Bank, Eatonton, Georgia

Ware Brothers (a regional real estate firm specializing in land and timber with holdings in Georgia, Alabama and other states)

The City of Grantville, Georgia

The City of Moreland, Georgia

The City of Newnan Water, Sewerage & Light Commission

City of Peachtree City, Georgia

I represent the following clients locally:

Fruehauf Corporation

Federal Land Bank of Columbia

Transport Acceptance Corporation

Stroh Breweries, Inc.

Clark Equipment Credit Corporation
formerly White Motor Credit Corporation

South Atlantic Production Credit Association
formerly West Georgia Production Credit Association

I periodically handle legal matters involving the following clients of the firm:

Newnan Federal Savings & Loan Association

The Farmers Bank, Union Point, Georgia

Pike Transfer Company

Batson-Cook Company

West Point Construction Company

Georgia Kraft Company

Georgia-Pacific Corporation

Hiwassee Land Company, a division of Bowater Paper Company

Popeye's Famous Fried Chicken, Inc.,

A. Copeland Enterprises, Inc.

Rostland, Inc.

Intercomp, Inc.

Atlantic-Canadian Corporation

Georgia Baptist Children's Home

In addition, I represent a broad range of individuals, local businesses, and the largest real estate brokerage firm in this area.

Areas of specialization: Litigation, Commercial Law, Banking Law, Bankruptcy Law, and Municipal Law.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently, although the frequency of my appearance in court has been somewhat less during the last two years because of the requirements of my largest clients.

2. What percentage of these appearances was in:

(a) federal courts;

Fifteen Percent (15%) to Twenty Percent (20%)

(b) state courts of record;

Eighty Percent (80%) to Eighty-five Percent (85%)

(c) other courts.

Not applicable.

3. What percentage of your litigation was:

   (a) civil;

   At present, One Hundred Percent (100%) civil litigation, but prior to 1980, Seventy-five Percent (75%) to Eighty Percent (80%) was civil litigation.

   (b) criminal.

   Prior to 1980, Twenty Percent (20%) to Twenty-five Percent (25%); at present, no criminal litigation

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Verdict or Judgment - approximately forty;
Sole Counsel - approximately twenty-five;
Chief Counsel - six to eight;
Associate Counsel - eight to twelve.

5. What percentage of these trials was:

   (a) jury;

   Over Fifty Percent (50%)

   (b) non-jury.

   Under Fifty Percent (50%)

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. European Bakers, Ltd.
   vs.
   Penn G. Holman, et al

   (a) February, 1984;

   (b) Fulton County Superior Court; Judge Frank M. Eldridge;

   (c) GLOVER & DAVIS, P. A., James H. Webb, Jr., 200 Westpark Drive, Suite 230, Peachtree City, Georgia; (404) 487-5834 - Co-Counsel

   LONG, WEINBERG, ANSLEY & WHEELER, Arnold Wright, Jr. and J. M. Hudgins, IV, 2500 The Equitable Building, 100 Peachtree Street, Atlanta, Georgia 30303, (404) 683-7900 - Opposing counsel

   Reported Opinion: 177 Ga. App. 172, 338 SE2d 702 (1985).

I represented European Bakers, LTD., a commercial bakery with a nationwide distribution of products. My client had a long standing relationship with an independent insurance agent, Mr. Penn Holman. Mr. Holman had written business interruption insurance for my client. A serious explosion at my client's largest baking plant resulted in extended business interruption and almost ruined the business.

A Seventy Percent (70%) coinsurance penalty was applied to the amount of the insurance claim as a result of European Bakers being substantially under-insured. European Bakers sued Mr. Holman alleging that he had obtained the company's insurance and was legally responsible for the coinsurance penalty. Mr. Holman denied any responsibility alleging he had used figures calculated by European Bakers' employees.

I researched the issues, conducted the discovery, and acted as lead counsel during a seven day jury trial. The theory of recovery was based upon contract, professional malpractice, and negligence. The direct damages were approximately $350,000.00. Consequential damages were $3,000,000.00 to $5,000,000.00. Although we received an adverse jury verdict, the Georgia Court of Appeals reversed and remanded for a new trial. I was able to favorably settle the case prior to trying it a second time.

The significance of the case is that is was complex litigation, involving complicated factual questions, commercial insurance policies, and expert testimony. Since I acted as lead counsel, this case evidences my ability to try a jury trial of extended duration involving complex issues.

The result of the case is significant in that it is a leading case in Georgia upon the duty owed by an independent insurance agent to a customer who has relied upon his judgment. The case establishes that an agent can owe a fiduciary duty to the client as a matter of law based upon factors which are cited in the court's opinion. The case further relieves the insured of its traditional duty to read the insurance policy in this situation. As a result, the case advances Georgia case law with regard to a changing area of business tort.

2. Anderson Oil Company, Inc.
vs.
Benton Oil Company, Inc., Lurner O. Benton III, and BOC Oil Company

(a) April, 1980;

(b) Superior Court of Jasper County; Joseph B. Duke, Judge

Related case: In Re: Benton Oil Company, Inc., U. S. Bankr. Ct. M.D. of Ga.

(c) GLOVER & DAVIS, P. A., Mr. Alan W. Jackson, 10 Brown Street, P. O. Box 1038, Newnan, Georgia 30263; (404) 253-4330 - Co-Counsel

Samuel D. Ozburn, 1108 Monticello Street, S.W., Covington, Georgia 30209; (404) 786-9600; - Opposing Counsel

Reported Opinion: 246 Ga 304, 271 SE2d 207 (1980)

Plaintiff was an oil company which had obtained a judgment against Benton Oil Company. I represented Benton Oil Company and Lurner O. Benton III, majority shareholder of Benton Oil Company.

Subsequent to Anderson Oil Company obtaining a judgment against Benton Oil Company, Lurner O. Benton III foreclosed a valid pre-existing security interest in the assets of Benton Oil Company. The assets were then purchased by BOC Oil Company.

I was sole counsel for Liberty National Life Insurance Company in the jury trial which took a large part of a week to try. I personally researched the legal issues, conducted the discovery and tried the case.

The Plaintiff was a widow who was the beneficiary of her husband's life insurance policy with my client. Her husband had been shot and killed by a third party who was a former friend. Charges against the third party had been dismissed based upon his testimony that the deceased was pointing a pistol at him. A history of bad blood existed between the two former friends.

As a result of the facts, my client denied coverage based upon an exclusion in the policy which excluded coverage when the insured was killed in the course of committing an assault.

The case involved Motions for Summary Judgment, trial to verdict and judgment and Motion for New Trial. Plaintiff sought the face amount of the policy, damages for bad faith denial of a claim and attorney's fees. Plaintiff obtained a verdict only for the face amount of the policy.

The case involved interesting questions of burden of proof and insurance law as well as complex evidentiary questions.

The evidentiary questions included admission of hearsay statements under the res gestae exception, the admissibility of opinion testimony of investigation officers as to the ultimate questions of fact, the right of witnesses in civil proceedings to assert the privilege against incrimination, and use of prior consistent as well as inconsistent statements.

The case was settled before the court ruled on the Motion for New Trial.

4. Diana Crews (Buchanan)
vs.
Terry Brown, David Rich, and Newnan-Coweta Humane Society

(a) June, 1983;

(b) Superior Court of Coweta County; William F. Lee, Jr., Judge

(c) HENNING, CHAMBERS & MABRY, Rex Smith, 2200 Century Parkway, N.E., Suite 825, Atlanta, Georgia 30345-3150; (404) 325-4800 - Counsel for Newnan-Coweta Humane Society

Richard L. Fullerton, 1006 Nowell Street, Orlando, Florida 32808; (305) 291-2673; - Opposing Counsel

Superior Court of Coweta County, State of Georgia; Civil Action File No. 12551

I was sole counsel representing one of the Co-Defendants in the above tort action, the trial of which took most of a week and was tried before a Superior Court jury. The significance of the case is that it was a typical tort case involving substantial fact questions, questions of liability and proximate cause, and a claim for actual damages in the amount of $125,000.00, plus punitive damages. The damages were based upon personal injury, pain and suffering, and intentional infliction of emotional stress.

The case showed my ability to try a typical personal injury action involving fact questions and substantial questions of damages. I was sole counsel for the Defendant Brown. I personally drafted the pleadings, did all of the research necessary to prosecute the case to trial, researched, drafted and filed a Motion for Summary Judgment and acted as lead counsel in conducting the trial of the case on the part of the Defendants. The case shows my ability, as sole counsel for a party, to prepare, organize, and try a complicated personal injury case involving fact and damage questions from beginning to end.

5.

Fruehauf Corporation
vs.
Cherokee Transportation, Inc., f/k/a Young's Transportation Company, f/k/a Atlantic Express (In the Matter of: Cherokee Transportation, Inc., f/k/a Young's Transportation Company, f/k/a Atlantic Express, Debtor).

Related case:

Courier Dispatch Group, Inc., Dependable Courier Service, Inc., Courier Acquisition Corporation and Dependable Industries, Inc.
vs.
Fruehauf Corporation, Trustee in Bankruptcy for the Estate of Sonic Delivery Systems, Inc., Kenneth Hallbert, Richard Cooper, Paul Picquet, Mrs. Lisa Stout, Individually and as Executrix of the Estate of Albert Stout; No. D13112, Super. Ct. of Fulton County, Ga.; removed to the U. S. Bankruptcy Court, No. 0790A (US Bankr N.D. Ga.)

Related Case:
In Re: Sonic Delivery Systems, Inc., U. S. Bankruptcy Court for the Northern District of Georgia, Atlanta Division

(a) May, 1983; June, 1984; December, 1985.

(b) United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division; Judge A. D. Kahn;

(c) Mr. Patrick S. Lancaster, Assistant General Counsel, Legal Department, Fruehauf Corporation, P. O. Box 238, Detroit, Michigan 48232; (313) 267-1040 - Corporate Counsel

RICHARD D. ELLENBERG, P. C., Mr. Richard D. Ellenberg, 83 Walton Street, N.W., Atlanta, Georgia 30303; (404) 525-4000 - representing Trustee for Sonic Delivery Systems, Inc.

HANSELL & POST, Mr. Paul Burke O'Hearn, 3300 First National Bank Tower, Atlanta, Georgia 30383; representing First Atlanta Bank; Mr. Phillip L. Martin, P. O. Box 607, Clarkston, Georgia 30021, (404) 294-4040- representing Cherokee Transportation, Inc.;

SCROGGINS, BRIZENDINE & BASSLER, Mr. Frank W. Scroggins, Suite 3410, 101 Marietta Tower, Atlanta, Georgia 30303; (404) 523-8441- representing Trustee in Bankruptcy;

TROUTMAN, SANDERS, LOCKERMAN & ASHMORE, Mr. Bruce W. Morehead, Jr., 1400 Candler Building, Atlanta, Georgia 30043; (404) 658-8000 - representing Ryder Truck Rental;

DIETRICK, EVANS & SCHOLZ, Mr. Robert W. Scholz, 133 Carnegie Way, Suite 1110, Atlanta, Georgia 30303; (404) 524-0800 - representing Dependable Courier Service;

CARR, TABB & POPE, Mr. W. Pitts Carr, 2620 The Equitable Building, 100 Peachtree Street, N.W., Atlanta, Georgia 30303; (404) 688-7993 - representing Courier Dispatch Group;

Cite: Fruehauf Corporation v. Cherokee Transportation, Inc., f/k/a Young's Transportation Company f/k/a Atlantic Express, Inc. and Independence Square Partners; U. S. Bankruptcy Court for the Northern District of Georgia, Atlanta Division; Bankruptcy Case No. 83-00598A

I represented Fruehauf Corporation, which sold sixty-two (62) new, heavily customized van trailers to a partnership which in turn leased the trailers to Cherokee Transportation, Inc. Fruehauf took a purchase money indebtedness secured by the trailers in the amount of approximately $1,700,000.00. The indebtedness was guaranteed by several parties, including a related corporation known as Sonic Delivery Systems, Inc. The debtor pledged a $3,600,000.00 note from Ryder Truck Rental as additional collateral

Cherokee Transportation subsequently filed for relief under Chapter 11 of the U. S. Bankruptcy Code. Substantial litigation ensued which lasted over a period of five years and included extensive discovery and complicated factual and legal questions with regard to a number of commercial transactions.

The validity of Fruehauf's security interests depended upon several fact questions which were litigated. Other factual issues included whether Fruehauf's security interest was adequately protected, the manner of perfection of the security interest, whether the transaction was a sale or lease, and the perfection of Fruehauf's security interest in the promissory note from Ryder Truck Rental.

Meanwhile, during the pendency of the Cherokee Transportation bankruptcy, Dependable Courier bought all of the assets of Sonic Delivery Systems, Inc., and attempted, in the guise of "noncompete" agreements, to pay the equity owners of Sonic substantial sums in preference to the creditors of Sonic, including my client. As a result, Fruehauf Corporation put Sonic Delivery Systems into involuntary bankruptcy, claimed that the sale by Sonic Delivery Systems to Dependable Courier was a fraudulent conveyance since it was not for adequate consideration, and attacked the attempt to pass consideration through to the equity owners of the company.

Fruehauf successfully obtained adequate protection payments during the course of the bankruptcy proceedings, established its security interest, and eventually recovered possession of all sixty-two van trailers. In addition, Fruehauf was able to recover a substantial sum from Dependable Courier, thereby preventing the attempt to pass consideration through to the equity holders of Dependable Courier. However, the court entered judgment against Fruehauf with regard to its secured position on the Ryder Truck Rental note.

Acting as lead counsel for Fruehauf in this litigation, I supervised the research, personally conducted the discovery, and presented the case to the court.

The case was complex litigation which dealt with substantial property interests and a number of developing commercial law issues. For example, the questions of whether the arrangement with Cherokee Transportation was a lease or a financing device determined what sort of relief Fruehauf Corporation was entitled to under the Bankruptcy Code, as well as the manner of perfecting Fruehauf's interest in the collateral.

In the Sonic Delivery litigation, the device of using noncompete and consulting agreements as a way of avoiding the claims of creditors and passing consideration through to equity owners of an insolvent business was the basic issue of the case. In addition, there were complicated problems in connection with whether the business was sold for an adequate consideration and whether the purchaser should have to pay additional consideration to the Trustee in Bankruptcy for the benefit of creditors. These issues involved extensive discovery and analysis of the business by experts in valuation.

6. The City of Newnan, by and through Newnan Water, Sewerage and Light Commission
vs.
Coweta County, Georgia and the Coweta County Board of Commissioners

   (a) 1983;

   (b) Coweta County Superior Court; Judge William F. Lee, Jr.;

   (c) GLOVER & DAVIS, P. A., Mr. J. Littleton Glover, Jr., 10 Brown Street, Newnan, Georgia 30263; (404) 253-4330; - Co-Counsel

   ALSTON & BIRD, 100 Galleria Parkway, Suite 1200, Atlanta, Georgia 30339, (404) 586-1500; Mr. G. Conley Ingram;

   Mr. Jeffrey S. Muir, 500 Northridge Blvd., Atlanta, Georgia 30338, (404) 587-6820;

   Reported Authority: 253 Ga. 457, 320 SE2d 747 (1984)

My law partner and I represented the Newnan Water, Sewerage & Light Commission. The Newnan Water, Sewerage & Light Commission is a municipal utility which provides electric, water and sewerage service to the City of Newnan and some surrounding areas of Coweta County. Coweta County was in the process of creating its own water authority to provide water service to areas within the county. Competition ensued between the county and Newnan Water, Sewerage & Light Commission for service to certain populated areas. The county denied permits to the city's utility to use road rights-of-way for the purpose of installing the city's lines. The Newnan Water, Sewerage & Light Commission sued the county seeking mandatory relief requiring that the permits issue.

After extensive discovery and several hearings, the court granted mandamus to the city by summary judgment. The case was appealed to the Georgia Supreme Court which upheld the trial court's grant of judgment for the City.

Along with Mr. J. Littleton Glover, Jr. of this firm, I planned the litigation strategy in this case. I drafted pleadings and conducted much of the discovery personally. I reviewed and revised all briefs and participated in oral arguments along with Mr. Glover.

The significance of the case is that it dealt with issues of the relative powers of municipalities and counties pursuant to both the State Constitution and local legislation. It was particularly significant with regard to the relationship between the City of Newnan and Coweta County; however, the Supreme Court's decision also gave guidance to other municipalities and counties similarly situated with regard to the provision of extraterritorial services and the requirements of the State Constitution in that regard.

7. L. O. Benton III, as Trustee under Agreement with Margaret Tate Benton and Margaret Benton Davis, Trustee under Agreement with Margaret Tate Benton
   vs.
   Sarah Hinton Shiver, The Georgia Marble Co. and Jim Walter Corp.;

   (a) March, 1984;

   (b) Chatham County Superior Court; Judge Frank S. Cheatham, Jr.;

   (c) GLOVER & DAVIS, P. A., J. Littleton Glover, Jr. 10 Brown Street, P. O. Box 1038, Newnan, Georgia 30264 (404) 253-4330; Co-Counsel

   MILLER, SIMPSON & TATUM, Mr. John B. Miller, P. O. Box 1567, Savannah, Georgia 31402 (912) 233-5722; Co-Counsel

HANSELL & POST, Mr. Gary Hatch and Jule W. Felton, 3300 First Atlanta Tower, 2 Peachtree Street, Atlanta, Georgia 30383, (404) 581-8000 - representing Georgia Marble Corp.;

GREENE, BUCKLEY, DeRIEUX & JONES, Mr. Ferdinand Buckley, 6th Floor, 10 Park Place, South, Atlanta, Georgia 30343, (404) 522-3541 - representing Jim Walter Corp.;

BERRY & McCALLAR, Mr. James McCallar, P. O. Box 9026, Savannah, Georgia 31412, (404) 234-1215 - representing Mrs. Shiver;

BECKMAN & PINSON, Mr. Luhr G. C. Beckman, P. O. Box 8064, Savannah, Georgia 31412, (912) 236-6400 - representing Georgia Marble Co. - Opposing counsel

Reported Authority: 251 Ga. 284, 304 SE2d 903 (1983)
254 Ga. 107, 326 SE2d 756 (1985)

My firm's clients, Mr. Benton and his sister, Mrs. Davis, held in trust a one-eighth (1/8) interest in lands containing marble deposits which were leased to the Georgia Marble Company for ninety-nine (99) years with the lease expiring in 1984. The marble deposits are some of the finest marble and most extensive deposits in the United States and, furthermore, are the only source of marble for the Georgia Marble Company.

The heirs to the Tate Estate, which originally owned the marble, entered into an agreement by which each gave the others the right of first refusal to buy their interests in the marble should it ever be sold. Georgia Marble Company, when its lease neared expiration, began to solicit the purchase of the interests of the heirs in a manner which encouraged them to accept Georgia Marble's offer and in a manner calculated to make it difficult for the remaining heirs to exercise their right of first refusal. Mr. Benton and Mrs. Davis wished to exercise their right of first refusal and purchase the marble interests. A number of the other heirs, however, sold their interests to Georgia Marble Company. Mrs. Shiver held a three-sixteenth (3/16) interest. She sold to Georgia Marble Company, and was sued by Benton and Davis seeking to set aside the conveyance and to require a conveyance to them pursuant to their right of first refusal.

Georgia Marble Company is the wholly owned subsidiary of Jim Walter Corporation. Our clients also argued that Georgia Marble Company and Jim Walter Corporation tortiously interfered with the contractual rights of Mr. Benton and Mrs. Davis.

A number of issues were involved in the case, both legal and factual. The case was first appealed to the Supreme Court of Georgia on the question of whether the right of first refusal agreement violated the Rule against Perpetuities and the policy against restraints on alienation. After the court ruled that it did not, the case proceeded to a week long jury trial in the Superior Court of Chatham County. Mr. Benton and Mrs. Davis lost the first part of a bifurcated trial. The Georgia Supreme Court affirmed the verdict and judgment for defendants in the Chatham Superior Court. Several cases involving other heirs are expected to come to trial in the near future, however, and the legal ruling of the Supreme Court should be helpful to our claims.

My personal involvement in the case was that I drafted or assisted in drafting the pleadings, conducted much of the discovery personally, assisted in researching the legal issues involved, and acted as assistant trial counsel in presenting the case to the jury. The trial was a week long jury trial. I assisted in researching and drafting all briefs presented to the trial and appellate courts with regard to this matter.

The significance of this case is two-fold. First, with regard to my litigation experience, it shows an ability to handle complex litigation extending over a period of years involving difficult issues, a week long jury trial, and two appeals to the Supreme Court of Georgia. The significance of the case generally is that it provides a benchmark decision in Georgia law on the Rule against Perpetuities and on the Georgia policy against unreasonable restraints upon the alienation of land. The Georgia Supreme Court decided, contrary to the majority of jurisdictions, not to apply the Rule against Perpetuities to preemptive rights or rights of first refusal such as those presented in this case. The court decided that it would use the general contract rule that the preemptive right would have a reasonable duration when no specific duration was set. The court further held that preemptive rights of this type do not violate the general policy of the law against unreasonable restraints upon alienation.

8. Jonathan Hawkins
vs.
Northeastern Fire Insurance Company of Pennsylvania, Macquire Insurance Agency, Inc., and John Michael Poland, an underwriter for Underwriters at Lloyds London and Transport Acceptance Corporation
vs.
Jonathan Hawkins and John Michael Poland, an underwriter at Lloyds London;

(a) January, 1984

(b) United States District Court for the Northern District of Georgia, Rome Division; Judge Harold L. Murphy;

(c) GLOVER & DAVIS, P. A., Mr. Randy E. Connell, 10 Brown Street, P. O. Box 1038, Newnan, Georgia 30264; (404) 253-4330 - Co-Counsel

MITCHELL, COPPEDGE, WESTON, BISSON & MILLER, Mr. Warren N. Coppedge, Jr., and Mr. J. Tracy Ward, P. O. Box 668, Dalton, Georgia 30720, (404) 278-2040;

DREW, ECKL & FARNHAM, Mr. James M. Poe, P. O. Box 7600, Atlanta, Georgia 30357; (404) 885-1400 - Opposing Counsel

Cite: Transport Acceptance Corporation v. Jonathan Hawkins, et al; U. S. District Court for the Northern District of Georgia, Rome Division; Case No. C83-30R

My client was Transport Acceptance Corporation ("TAC"). TAC had a first lien security interest in a tractor used for long distance highway hauling. Jonathan Hawkins owned the truck. The truck mysteriously disappeared from beyond Mr. Hawkins' barber shop in Dalton, Georgia. The defendants were the insurance companies who insured the truck and its cargo; they defended by alleging that Jonathan Hawkins was responsible for the disappearance of the truck.

As loss payee in the insurance policy, TAC intervened in the lawsuit as an additional plaintiff. The case involved the factual questions surrounding the disappearance of the truck and the legal questions of the meaning of the policy, the value of the collateral, and the burden of proof on several of the critical issues.

I acted as lead counsel, supervised discovery and preparation, and personally tried the case. TAC obtained judgment for the full amount which it was owed pursuant to the terms of its agreement with Mr. Hawkins.

The case involved a substantial claim against an insurance company which was ably represented by experienced trial counsel. The significant questions involved intervention, TAC's rights under the loss payable clause, and the question of burden of proof upon issues where evidence was lacking.

9. Farmers & Merchants Bank
vs.
Clyde F. Alexander

Related Case: In the Matter of: Clyde F. Alexander; Farmers & Merchants Bank of Eatonton
vs.
Clyde F. Alexander

(a) April, 1984;

(b) U. S. Bankruptcy Court for the Middle District of Georgia; Robert F. Hershner, Jr., Judge

(c) GLOVER & DAVIS, P. A., Mr. Roy B. Huff, Jr., 200 Westpark Drive, Suite 230, Peachtree City, Georgia 30269; (404) 487-5834 - Co-Counsel

BROWN, KATZ, FLATAU & HASTY, William M. Flatau, 355 Cotton Avenue, Macon, Georgia 31204; 742-6481 - Opposing Counsel

Cite: Farmers & Merchants Bank v. Clyde Alexander; U. S. Bankruptcy Court for the Middle District of Georgia, Macon Division; Case No. 83-51181-MAC

I represented the Farmers & Merchants Bank of Eatonton. The bank dealt with the defendant, Clyde Alexander, over a period of several years and financed his operations as a commercial farmer.

The defendant executed several notes to the bank and used the proceeds to purchase livestock in which the bank took a properly perfected security interest. The debtor subsequently filed bankruptcy. After the bankruptcy was filed, it became apparent that the debtor had sold the livestock and failed to remit the proceeds to the bank upon sale. As a result, the bank objected to the discharge of the debtor pursuant to 11 USC § 727 and objected to the dischargeability of the debt to the bank pursuant to 11 USC § 523(a). The case involved discovery and a non-jury trial before Judge Hershner, U. S. Bankruptcy Judge. Judge Hershner denied the relief sought by the bank, as well as the counterclaim filed by the defendant. The bank appealed the case to the U. S. District Court for the Middle District of Georgia which upheld Judge Hershner's ruling.

I acted as lead counsel throughout the litigation. I supervised the discovery and preparation, and presented the case to the court.

The significance of the case is that Judge Hershner, in a well written and lengthy opinion, increased the burden of proof upon a secured creditor who wishes to object to the dischargeability of a defendant under USC § 523(a). Judge Hershner required a high degree of willfulness on the part of the debtor. He also considered the acquiescence of the secured creditor a relevant consideration on the willfulness of the debtor. As a result, the opinion in the case makes it more difficult for a secured creditor to object to the discharge of a debtor, particularly a commercial farmer. However, the case does give a secured lender more predictability with regard to the standard to which it will be held.

10. White Motor Credit Corporation
vs.
Barbara S. Holden d/b/a B&E Transport

Related case:

Barbara Holden
vs.
American Southern Insurance Company; White Motor Credit Corporation, Intervenor

(a) February, 1985; October, 1986, related case;

(b) Superior Court of DeKalb County, Hilton Fuller, Judge; State Court of Fulton County, related case;

(c) GLOVER & DAVIS, P. A., Mr. Roy B. Huff, Jr., 200 Westpark Drive, Suite 230, Peachtree City, Georgia 30269; (404) 487-5834 - Co-Counsel

WEBB, CARLOCK, COPELAND, SEMLER & STAIR, Dennis J. Webb, 2500 Peachtree Center Tower, 230 Peachtree Street, N.W., Atlanta, Georgia 30343-0770; (404) 522-8220 - Counsel for American Southern Insurance Company

Lawrence C. Burke, Esquire, P. O. Box 1224, Marietta, Georgia 30061; (404) 421-1297 - Opposing Counsel

Cite: White Motor Credit Corporation vs. Barbara S. Holden d/b/a B&E Transport; Case No. 83-5826-5, Superior Court of DeKalb County, State of Georgia

Related case: Barbara S. Holden v. American Southern Insurance Company, State Court of Fulton County, State of Georgia

I represented White Motor Credit Corporation which had financed two large tractors for over-the-highway hauling for Ms. Holden. I brought a Complaint seeking to repossess the tractors and seeking a judgment from Ms. Holden for the amount owed my client. I was sole counsel at all court appearances, personally conducted all discovery and supervised associates in conducting the research required by this litigation.

I successfully obtained the Writ of Possession, although opposed by Ms. Holden. Unfortunately, one of the trucks mysteriously disappeared on the eve of the hearing.

Ms. Holden filed a Counterclaim for wrongful repossession. A full trial on the merits was necessary to determine the amount owed by Ms. Holden to White Motor Credit Corporation, the value of the collateral, the factual basis of Ms. Holden's Counterclaim, and her damages, if any. The case was tried by the court without a jury.

The case involved a complicated fact situation concerning the dealings between my client and Ms. Holden over a period of years. The damage issues involved expert testimony as to the value of the collateral as well as a Certified Public Accountant's testimony as to Ms. Holden's lost profits based upon extensive discovery of business records.

Verdict and judgment was obtained by Plaintiff, White Motor Credit Corporation on both its Complaint and the Counterclaim. Ms. Holden appealed, but we were subsequently able to obtain a dismissal of the appeal.

The related suit was by Ms. Holden against her insurance carrier for the value of the missing truck. I brought a Motion to Intervene on behalf of my client to protect their claim to the insurance proceeds. The insurance company defended on the basis of allegations that Ms. Holden participated in the conversion or theft of the truck.

This case settled favorably to White Motor Credit Corporation after being called for trial. Complete discovery and proper preparation laid the basis for the favorable settlement.

The significance of the case is it shows an ability to pursue reasonably complicated factual and legal issues to a conclusion in protracted litigation lasting over several years.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

A. I have represented local municipalities on various constitutional challenges, all of which have been successfully defended. These cases show my ability to deal with constitutional issues in a litigation context. The following are representative cases of this sort which I have handled in the past two years:

(1) H & H Operations v. City of Peachtree City, Georgia, et al; U. S. District Court for the Northern District of Georgia, Case No. C86-138N, before The Honorable G. Ernest Tidwell

This case involved a constitutionally based challenge to the Sign Ordinance of the City of Peachtree City. The constitutional challenge was based upon the holding in the Supreme Court case of Metro Media, Inc. v. City of San Diego, and its progeny.

The essence of the claim was that commercial speech was favored over noncommercial speech. We were able to slightly revise our Ordinance in accordance with the plurality of the opinion in the Metro Media case and obtain a Dismissal of the constitutional challenge, preserving the essential elements of the Peachtree City Sign Ordinance.

(2) Margaret Hyde v. City of Peachtree City, Georgia, et al; U. S. District Court for the Northern District of Georgia; Case No. C86-33N, before The Honorable G. Ernest Tidwell

This case involved a constitutionally based challenge to the City of Peachtree City's Zoning Ordinance, alleging that the failure to rezone certain property was an unconstitutional taking, as well as violating the Plaintiff's rights to equal protection and due process of the law. We were able to obtain a Dismissal of the case upon the law and the pleadings without a full trial on the factual questions.

(3) Robbie Hood Biles and Koons, Wood & Associates, Inc. v. City of Peachtree City, Georgia, et al; Superior Court of Fayette County, Georgia, before The Honorable Andrew J. Whalen

(4) Palm Beach Development Corporation v. Frederick Brown, Jr., Mayor of Peachtree City, Georgia, et al; Superior Court of Fayette County, Georgia, before The Honorable Andrew J. Whalen

These were two constitutional challenges to the City of Peachtree City's Zoning Ordinance, based on both the Georgia and Federal Constitutions. We were able to obtain the dismissal of both cases upon Motion for Summary Judgment showing that the Plaintiffs were unable to meet necessary procedural requirements prerequisite to attacking the city's Zoning Ordinance.

B. Lurner C. Benton, Jr. Estate: A large estate involving a number of securities, both closely held and public, bank ownership, approximately 4,000 acres of real estate, and family businesses. I handled the complete estate file, including probate of the Will, valuation of all assets, and filing and obtaining final approval of the Estate Tax Return, which included an audit by the Internal Revenue Service agent in charge of the file. The file involved difficult questions of evaluation, such as that of closely held bank stock and family businesses. The estate involved additional problems of a lack of liquidity, and we were able to qualify for an exception to the tax payment requirements which allowed the tax to be paid over installments under Section 6166 of the Internal Revenue Code.

The significance of this matter is that it is the only Estate of its size which I had handled, and only the third Estate Tax Return which I had prepared and filed. I was required to deal with a number of areas of the law where I had little previous experience. It shows an ability to deal competently with complex legal and fact questions in areas of the law where I have had no previous experience.

C. Representation of two cities, City of Grantville, Georgia and City of Moreland, Georgia.

In the course of representing the above two cities, I have performed the following services:

(1) Zoning Ordinances: I assisted in drafting and implementing Zoning Ordinances for these two municipalities which had never adopted zoning in the past, during a period of growth and development in the area. Additionally, I have defended subsequent challenges to the Zoning Ordinance of each city. The Ordinances have proved effective in allowing the cities to control development and protect property values.

(2) Municipal Charters: I reviewed and completely rewrote the municipal Charters of the City of Grantville and the City of Moreland, one of which had not been revised since 1905 and the other since 1911. I submitted the Charters to the State Legislature and supervised the procedure to obtain passage of the Charters as local legislation. I insured that all legal requirements were met in order to validly enact the Charters into law. Experience has proven that the Charters are workable constitutions for the governments of these two municipalities.

(3) Moreland Water System: The City of Moreland had no municipal water system. I assisted with grant applications; performed both negotiations with owners and title searches necessary to acquire rights of way; drafted or supervised the preparation of contracts for the construction of the system; worked with Bond Counsel to issue bonds secured by the system in order to finance the system; obtained passage of a bond ordinance; and represented the City in resolving disputes with land owners and contractors. The system has been in operation for a number of years and has provided substantial benefits to the City and surrounding area.

D. Representation of two national banks, Peachtree National Bank, Peachtree City, Georgia, and First Union National Bank of Newnan, Newnan, Georgia:

Representation of these clients is significant in the type and quality of legal work required. I am the attorney ultimately responsible for all legal matters involving these banks, including regulatory matters, overseeing collection matters, handling problem loans from a legal standpoint, and reviewing and revising all documentation which the banks use for their loans and other commercial transactions. Representation of these clients shows ability to deal with complex commercial law questions, as well as regulatory questions affecting the banks.

E. Louise L. Bethune, et al v. City of Mountain Brook; Supreme Court of Alabama, before Judge Maddox;

This case involved substantial claims by a developer by the City of Mountain Brook, based upon a purported oral contract by the City to accept the dedication of streets by the developer. Although I was co-counsel on this case, I did the primary research, drafted the pleadings and Briefs as well as argued the case in the Supreme Court of Alabama.

The Supreme Court of Alabama rendered two opinions in this case which rendered it a leading case on implied contracts with municipalities and municipalities' liability for the breach of such contracts. The reported opinions were Louise L. Bethune, et al v. City of Mountain Brook, 293 Ala. 89, 300 So 2d 350 (1974); ____Ala. ____, 336 So 2d 50 (1976).

F. In the matter of: Larry Gene Shirley, Debtor; The Federal Land Bank of Columbia vs. Larry Gene Shirley and Citicorp Person to Person Financial Center, Inc.;

Related Litigation: Larry Gene Shirley vs. The Federal Land Bank of Columbia; Citicorp Person to Person Center, Inc.; The Commercial Bank of Douglasville; The Small Business Administration; Jerry A. O'Neal d/b/a Covered Wagon; and Fred Bowers; U. S. Bankr. Ct. N.D. Ga., No. 83-1004A (Adv. No. 83-2009A), before Judge W. Homer Drake;

I represented The Federal Land Bank of Columbia in the above referenced bankruptcy litigation in the U. S. Bankruptcy Court. The debtor filed under Chapter 11 of the U. S. Bankruptcy Code, but the case was subsequently converted to a Chapter 7. This protracted litigation lasted over a year and involved real estate in which The Federal Land Bank of Columbia had a first lien security interest and Federal Land Bank of Columbia stock, also known as participation certificates. The Federal Land Bank of Columbia first litigated its right to foreclose upon the real estate, which was granted. It subsequently litigated through a full evidentiary hearing the legal rights of the parties to the stock or participation certificates held by the debtor. The Trustee in Bankruptcy claimed the stock was part of the debtor's estate pursuant to 11 USC § 541(a); The Federal Land Bank of Columbia maintained that the debtor only had the right to have the stock set-off against his indebtedness, relying on 12 USC § 2034(a), popularly known as the Farm Credit Act. The case also involved questions of the equitable subordination of The Federal Land Bank's lien pursuant to the provisions of the Bankruptcy Code and of marshaling of assets.

I acted as lead counsel in conducting discovery, briefing, and trying the case before the court. The court entered judgment in favor of The Federal Land Bank of Columbia as a matter of law and as a matter of fact on all issues.

The significance of the case was that it decided issues which, to my knowledge, had not been decided in the U. S. District Court for the Northern District of Georgia with regard to the relative priority of the claims of a Trustee in Bankruptcy and of The Federal Land Bank of Columbia pursuant to the stock which a borrower from a Farm Credit institution is required to purchase upon obtaining a loan. This issue has been hotly contested in this state and other areas as a result of the farm crisis and the crisis in the Farm Credit system. The precedent established continues to be helpful to my client in providing predictability with regard to its collateral position and in dealing with Bankruptcy Trustees with regard to Farm Credit loans.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I own both common and preferred stock in my present law firm. The firm will be legally required and has agreed to retire this stock upon my termination of employment with the firm. The value of the common stock will be determined by an appraisal of the firm assets. This amount and the face value of the preferred stock will be liquidated upon my leaving the firm by either a cash payment or a promissory note, guaranteed by the equity owners of the firm. My interest in the firm's profit sharing plan will be liquidated upon my leaving the firm by a one time payment.

I will own a joint interest in the following real estate ventures with former business and professional associates:

Greison Trail Venture
Nautilus Venture
Semi-Pro Investors
The Commercial House

Each venture owns improved local real estate which is rented. None of the ventures present a potential for a conflict of interest with the duties of a U. S. District Judge. Only one other attorney is involved in any of these ventures, and he is unlikely to appear in Federal Court. I will not be actively involved as a partner in any of the ventures. As a result, I intend to retain these real estate investments.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I know of no potential conflict of interest with the exception of those listed above. Due to the uncomplicated nature of my investments (passive real estate and publicly traded securities) and the limited number of individuals other than myself involved, any conflict with regard to a case before me would be evident.

   I am aware that any of the following could present a conflict of interest, should they arise:

   (1) Any case about which I have personal knowledge or which was pending in my firm at the time I was associated with the firm;

   (2) Any matter involving a former client, if I have any knowledge of the matter from representing that client;

   (3) Any matter in which I or my family has a financial interest.

   Only two categories of my litigation practice present a potential for conflicts of interest. First, any constitutional challenge to Ordinances which I have drafted or revised for the municipalities which I represent. Second, any litigation involving my previous clients with regard to matters of which I have personal knowledge. For example, litigation could arise with regard to a loan which I have closed for a financial institution which I represent, or a matter which my firm is presently handling could appear in the District Court by original jurisdiction or by appeal from the Bankruptcy Court. I would monitor all matters involving former clients to prevent this occurrence.

   I consider the likelihood of a conflict of interest in either area slight.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978 may be substituted here.)

A. Calendar Year 1986 - Jack T. Camp:

Glover & Davis, P. A. (JACK T. CAMP):

Salary	$ 84,237.84
Profit Sharing Plan Contribution	12,633.12
Dividends, Preferred Stock	6,000.00

Sale of Timber to GEORGIA KRAFT COMPANY	22,325.00

Stocks and Interest Income (JACK T. CAMP):

First Union National Bank	Interest Income	$ 443.00
Newnan Federal Savings & Loan Association	Interest Income	49.00
U. S. West	Stock Dividend	139.00
Bell South	Stock Dividend	218.00
Nynex	Stock Dividend	160.00
Ameritech	Stock Dividend	163.00
Southwestern Bell	Stock Dividend	148.00
A T & T	Stock Dividend	263.00
Bell Atlantic	Stock Dividend	165.00
Pacific Telesis	Stock Dividend	144.00
Bank of Coweta	Stock Dividend	24.00
Newnan Federal Savings & Loan Association	Stock Dividend	300.00
National Municipal Trust	Stock Dividend	311.15
National Tech & Tele Fund	Stock Dividend	17.00
Lea Container	Stock Dividend	32.00
Columbus Bank & Trust Co.	Stock Dividend	23.00
DuPont	Stock Dividend	101.00
Mobil	Stock Dividend	56.00
Southern Company	Stock Dividend	129.00
Merrill Lynch Mutual Funds	Stock Dividend	366.91

Tax Free Municipal Bonds:

DeKalb County Water & Sewerage Revenue Bond	Interest	287.50
Murray County Development Authority Industrial Development Revenue Bond	Interest	320.00
LaGrange Housing Authority	Interest	500.00
Georgia Municipal Electric Authority	Interest	493.76
Appling County, GA Development Authority	Interest	530.00
Burke County, GA Development Authority	Interest	1,225.00

Rental Income:

House located on Thomas Powers Road	Rental Income	2,140.00
House located on Hewlett South Road	Rental Income	2,950.00

Joint Ventures:

Greison Trail Joint Venture (1/4 interest)	Rental Income	7,199.00
Nautilus Venture (1/3 interest)	Rental Income	3,056.00
Semi-Pro Joint Venture (1/5 interest)	Rental Income	3,077.00
The Commercial House (.025 interest)	Net Income	321.00
Glover & Davis, P. A. Equipment Rental (1/5 interest)	Net Income	-0-
West Broad Venture (1/7 interest)	Rent Received	3,429.00
10 Brown Street	Rent Received	5,228.00

B. Calendar Year 1987 thru October 30, 1987.

Jan. 1, 1987 - October 30, 1987

Glover & Davis, P. A. (Jack T. Camp)

Salary	90,436.95
Profit Sharing Plan Contribution	8,916.50

Stocks and Interest Income:

First Union National Bank	Interest Income	429.30
U.S. West	Stock Dividend	116.92
Bell South	Stock Dividend	179.02
Nynex	Stock Dividend	136.43
Ameritech	Stock Dividend	137.08
Southwestern Bell	Stock Dividend	126.64
AT&T	Stock Dividend	96.60
Bell Atlantic	Stock Dividend	137.05
Pacific Telesis	Stock Dividend	120.18
Columbus Bank & Trust Co.	Stock Dividend	48.45
Newnan Federal Savings & Loan Association	Stock Dividend	660.00
National Tele & Tech Fund	Stock Dividend	14.23
National Municipal Trust	Stock Dividend	296.28
Sea Container, Ltd.	Stock Dividend	5.00
DuPont	Stock Dividend	52.80
Southern Company	Stock Dividend	107.55
Merrill Lynch Mutual Funds	Stock Dividend	75.00

Tax Free Municipal Bonds

DeKalb County Water & Sewerage Revenue Bond	Interest	143.75
Murray County Development Authority Industrial Development Revenue Bond	Interest	160.00
LaGrange Housing Authority	Interest	500.00
Georgia Municipal Electric Authority	Interest	493.76
Appling County, GA Development Authority	Interest	265.00
Burke County, GA Development Authority	Interest	1,225.00

Rental Income:

House located on Thomas Powers Road	Rental Income	2,400.00
House located on Hewlett South Road	Rental Income	3,300.00

Joint Ventures:

Greison Trail Joint Venture (1/4 interest)	Rental Income	7,590.00
Nautilus Venture (1/3 interest)	Rental Income	2,333.00
Semi-Pro Joint Venture (1/5 interest)	Rental Income	4,425.48
The Commercial House (.025 interest)	Net Income	-0-
Glover & Davis, P. A. Equipment Rental (1/5 interest)	Net Income	-0-
West Broad Venture (1/7 interest)	Rent Received	8,800.00

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

   Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   (a) State Senator Arthur B. Edge, IV, campaign for State Senate, 1986. Acted as Precinct Captain and Co-Counsel. My responsibilities were to encourage voters, find campaign workers in my precinct, and to advise on any potential legal issues.

   (b) Sheriff Larry Hammett, campaign for Sheriff of Coweta County, 1984. Acted as Precinct Captain and Co-Counsel. My responsibilities were to encourage voters, find campaign workers in my precinct, and to advise on any potential legal issues.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

(a) Between 1975 and 1980, I was on the Indigent Defender Panel of the Coweta County Bar Association. Coweta County had no public defender, and it was the responsibility of the local Bar to provide adequate representation for all indigent criminal defendants. During that period of time, I represented approximately 30 or more indigent defendants a year. A significant percentage of these cases actually went to trial. The County only reimbursed a small percentage of the time involved, the rest of the time being contributed by the lawyers on the panel.

(b) I have been, in the past, on the Georgia Legal Services Referral Program for spouses seeking a divorce who are unable to afford an initial fee. I handled a number of domestic relations cases for individuals in that situation prior to my ceasing practice in the domestic relations field.

(c) I have assisted a number of charitable and non profit corporations with legal matters. Some examples are The Newnan-Coweta Association for Retarded Citizens, The Newnan-Coweta Humane Society, The Concerned Parents Organization, Infants and Children's Association, Inc., and The Enon Grove Community Group.

The Concerned Parents Organization is a good example. The group was a group of lower income families which had formed a corporation to obtain governmental assistance and operate a day care center for small children so that the mothers could work. One of the organizers had taken control of the organization and its bank accounts and was allegedly applying its funds to her personal use. I represented the parents in regaining control of the organization through litigation. I spent approximately 60 hours on this matter and brought it to a successful conclusion. We have subsequently advised the group on corporate and tax matters.

I have advised the Newnan-Coweta Humane Society over the years. We have assisted them in obtaining possession of animals who were being mistreated, advised them with regard to bringing charges against individuals responsible for mistreating animals, and defended claims against them.

I have represented the Newnan Coweta Association for Retarded Citizens on a number of matters. I have recently represented them on matters for which I charged reduced fees. I have represented them on matters for which I charged no fees in the past. The types of matters were advice on their corporate procedure, advice with regard to contracts, real estate work, and general advice with regard to the operation of a facility that renders services to mentally retarded children and adults.

The Infants' and Children's Association, Inc., was an organization formed to seek assistance for severely regarded infants. We did the work necessary to form the corporation and gave the advice with regard to general business matters and their tax status. I spent in excess of 10 hours with regard to this matter.

(d) I regularly do legal work for churches at reduced or no fee. I also have a policy of representing older or disadvantaged members of my own church at a reduced or no fee. Two recent examples are Mrs. Adelaide Hudson and Mrs. Yvonne McCullough. I helped both ladies with insurance claims. I also wrote a Will for Mrs. Hudson. I advised Mrs. McCullough with regard to real estate matters and negotiated and drafted leases on her home.

I represented one young man (Terry Brown) in defending a claim which I felt unjust and which would have resulted in a judgment which was nondischargeable in bankruptcy. Mr. Brown was the sole support of his family and had no money to pay legal fees. The case was tried to a jury resulting in a Defendant's verdict. I spent well in excess of 100 hours on the case and charged Mr. Brown no fee.

(e) In the course practicing law in a general practice firm in Newnan, Georgia, an attorney is required in his day to day practice to often accept cases as a matter of professional responsibility, even though the client cannot afford to pay any fee or a fee commensurate with the services. I regularly do this in the practice of law, and charge a nominal fee or no fee for the service rendered.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I formerly was a member of the Newnan Elks Club (1976-1987). Upon reviewing my membership in connection with my application for this judgeship, I checked the By-laws and confirmed that it is a fraternal organization with full membership open only to males. As a result and in view of the above comment in the case of judicial conduct, I resigned my membership.

I belong to the Newnan Kiwanis Club (1975-Present). Membership in the Kiwanis Club was previously limited to males. Kiwanis International voted at the July 1987 Convention to remove any restrictions based on gender with regard to membership. I advised the local club on redrafting its By-laws to comply and with the result that the local By-laws have removed any reference to gender.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes. The Georgia Congressional Judicial Selection Committee recommended me to the Justice Department. The Georgia Republican Congressional delegation established the Judicial Selection Committee which is composed of six prominent attorneys from around the state. The committee has functioned for a number of years, has established procedures, and acts independently of the Congressional Delegation which appoints it.

The Committee accepts applications, resumes and letters of recommendation. The Committee conducts independent investigations, as well as interviewing all candidates. I was interviewed by the committee as a whole. The Committee subsequently met and recommended three individuals for the position, in accordance with Justice Department policy. The Committee did indicate that I was its primary choice.

I was subsequently interviewed by attorneys at the Justice Department, who also made independent inquiries as to my background and ability. I understand that the Justice Department subsequently recommended me to the President for the nomination, after receiving a favorable Federal Bureau of Investigation Report and a favorable recommendation from The American Bar Association Standing Committee on the Federal Judiciary. I was then notified by The White House that I was being nominated.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question?

   No.

5. Please discuss your views on the following criticism involving "judicial activism."

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

   Some of the characteristics of this "judicial activism" have been said to include

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

   b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

   c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

   d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

   e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

   The criticism of "judicial activism" in the questionaire goes to the heart of the question of the proper role of the federal courts in our society. The answer to the question must be found in the Constitution and in the doctrine of separation of powers embodied in the Constitution. As used in the questionaire, "judicial activism" refers to judicial legislation or the tendency of some judges to encroach upon the policy making functions of the legislative branch. It also refers to a tendency by some courts to usurp some of the administrative functions of the executive branch. It is the opposite of the tendency known as "judicial restraint" which is a more fitting response by judges to questions of social or economic policy. As such, I consider the criticism of "judicial activism" valid for the following reasons:

First, the role of the judiciary under our Constitution is not as a policy making body. The Constitution assigns to the Congress the principal task of legislation. The Constitution does, of course, give the President a role in the legislative process through the veto power and through his power to recommend legislation to Congress that "he shall judge necessary and expedient". The framers provided no such role for the judiciary. The most effective arguments against such a role for the judiciary are based upon separation of powers considerations. The doctrine of separation of powers does not allow courts to assume the role of policy makers or to participate in the legislative process, except through judicial review of the constitutionality of legislation.

In addition to the separation of powers doctrine, the undemocratic nature of the judiciary itself argues against its assuming the prerogatives of the executive or the legislative branches. The Founding Fathers seemed to recognize this by assigning primary legislative responsibility to Congress as the most representative branch of government. Proponents of judicial restraint on the Supreme Court have often recognized the unsuitability of the judicial process for such policy making. As Justice Felix Frankfurter noted:

"Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates proper democratic government....such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests - the people." American Federation of Labor v. American Sash and Door Company, 335 U.S. 538, 553 (1949).

Justice Frankfurter's argument for judicial restraint was based upon the belief that the powers exercised by the judiciary are "inherently oligarchic and should "be exercised with rigorous self restraint". Id. at 555.

As a practical matter, the legislature provides the best forum for determining the proper mores or standards of society and for providing solutions to social problems. The legislature is structured to provide representation to the competing interests in society and to provide debate which can craft a solution after considering the ramifications of change. On the other hand, the adversary system as developed in our courts is designed to resolve the specific grievances of individuals or groups. Thus, courts are not as well suited as the legislature to deal with policy questions or as the executive to handle continuing administrative problems.

Finally, the Constitution's description of the judicial power limits the court's authority to resolving specific grievances rather than enacting broad policies. Chief Justice John Marshall, in his opinion in Marbury v. Madison, recognized that judicial review is a necessary function of the courts that protects the rights of individuals and minorities. However, Marshall was emphatic in his pronouncement that "the province of the court is, solely, to decide on the rights of individuals". Marbury v. Madison, 1 Cranch 137 (1803). The plain language of Article III limits the role of the judiciary to deciding "cases and controversies".

Each of the characteristics expressed in the questionaire on "judicial activism" allude to the tendency of the judiciary to deviate from deciding the grievances of individuals as presented in the context of a case or controversy and toward dealing with broad classes of individuals or the general problems of a number of individuals. As such, each tendency deviates from the proper role of the judiciary under our Constitution.

In conclusion, the role of the federal courts is to interpret the law, not make the law. Even when a court's constitutional duty requires it to rule on the validity of a legislative enactment, it should exercise restraint and give the deference to the legislature or the executive mandated by the Constitution.

AFFIDAVIT

I, JACK TARPLEY CAMP, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 15, 1988
Date

Jack Tarpley Camp Jr.
Jack Tarpley Camp, Jr.

Myra S. [illegible]
Notary Public
State of Georgia
My Commission Expires: [illegible]

6673m

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	5 000 00	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	11 000 00
Listed securities—add schedule	92 164 16	Notes payable to relatives	
Unlisted securities—add schedule	95 000 00	Notes payable to others	32 500 00
Accounts and notes receivable:		Accounts and bills due	2 000 00
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	273 855 78
Real estate owned—add schedule	481 050 00	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	50 000 00		
Cash value—life insurance	1 000 00		
Other assets—itemize: See attached Schedule	406 750 00		
		Total liabilities	319 155 78
		Net worth	811 808 38
Total assets	1,130 964 16	Total liabilities and net worth	1,130 964 16

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	871 600 00	Are any assets pledged? (Add schedule.)	Real Estate
On leases or contracts	None	Are you defendant in any suits or legal actions?	No
Legal Claims	None	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	None		
Other special debt	None		

SCHEDULE OF LISTED SECURITIES

Stocks:

U. S. West, 50 shares	$ 2,493.75
Bell South, 114 shares	4,232.25
Ameritech, 38 shares	3,344.00
Nynex, 50 shares	3,362.00
Southwestern Bell, 77 shares	2,704.62
A T & T, 62 shares	1,736.00
Bell Atlantic, 50 shares	3,375.00
Pacific Telesis, 102 shares	2,766.75
Newnan Federal Savings & Loan Association, 1500 shares	18,750.00
National Tele and Tech Fund	1,500.00
National Municipal Trust	3,056.79
Sea Container, Ltd., 100 shares	2,200.00
Columbus Bank & Trust, 85 shares	3,485.00
DuPont, 12 shares	907.50
Southern Company, 66 shares	1,600.50
Global Marine, 400 shares	1,000.00
Po Folks, Inc., 200 shares	650.00

Bonds:

DeKalb County Water & Sewerage Revenue Bond	5,000.00
Murray County Development Authority Industrial Bond	5,000.00
LaCrange Housing Authority Bond	5,000.00
Georgia Municipal Electric Authority	5,000.00
Appling County Development Authority Bond	5,000.00
Burke County Development Authority Bond	10,000.00

SCHEDULE OF UNLISTED SECURITIES

Glover & Davis Equipment Rental, Inc.	$ -0-
Glover & Davis, P. A., preferred stock	60,000.00
Glover & Davis, P. A., common stock	35,000.00

SCHEDULE OF REAL ESTATE OWNED AND SCHEDULE OF REAL ESTATE MORTGAGES PAYABLE

Description	Valuation	Indebtedness
Land Lot 126 of the Fourth Land District, Coweta County, Georgia, home and twenty acres	$ 120,000.00	$ 41,800.00
Land Lot 106 of the Fourth Land District, Coweta County, Georgia, wood land, 40 acres	40,000.00	
Land Lot 126 of the Fourth Land District, Coweta County, Georgia, rental house and 55 acres	70,000.00	
Land Lot 127 of the Fourth Land District, Coweta County, Georgia, rental house and 20 acres	50,000.00	
Land Lots 183 and 184 of the Fourth Land District, Heard County, Georgia, 160 acres, 1/2 interest	40,000.00	
Land Lots 104, 105, 106 and 103 of the Fourth Land District of Coweta County, Georgia, 120 acres, 1/2 interest	42,000.00	
Land Lots 90 and 103 of the Second Land District, Coweta County, Georgia, 35 acres, 1/3 interest	35,000.00	
Land Lot 104 of the Second Land District, Coweta County, Georgia, 120 acres, 1/6 interest	21,250.00	
Land Lot 103 of the Second Land District, Coweta County, Georgia, 12 acres, 2/5 interest	28,800.00	
Land Lot 41 of the Fifth Land District, Coweta County, Georgia, 1/4 interest	10,000.00	
Lot, Westpark, Peachtree City, Georgia, 1/6 interest	24,000.00	17,600.00

SCHEDULE OF OTHER ASSETS AND SUPPLEMENT TO REAL ESTATE MORTGAGES PAYABLE

Joint Ventures:

Description	Valuation	Indebtedness
Greison Trail Joint Venture (1/4 interest)	137,500.00	92,500.00
Nautilus Joint Venture (1/3 interest)	45,000.00	13,250.00
Semi-Pro Investors Joint Venture (1/5 interest)	41,000.00	27,400.00
West Broad Venture (1/6 interest)	74,000.00	74,000.00
Other:		
Glover & Davis, P. A. Profit Sharing Plan & Trust	99,260.00	32,300.00
Merrill Lynch Mutual Funds (IRA)	10,000.00	

SCHEDULE OF LIABILITIES

Notes Payable to Banks:	
Newnan Federal Savings & Loan Association (Unsecured 90-day note)	$ 11,000.00
Notes Payable to Others:	
Promissory Note to Trustee, Glover & Davis, P. A. Profit Sharing Plan & Trust	32,300.00
Real Estate Mortgages Payable:	
Home Federal Savings & Loan Association (Home mortgage)	41,800.00
Len Crowder and Marialis Hamlett (Purchase money indebtedness on real estate)	7,305.78
Peachtree National Bank (Purchase money indebtedness on real estate)	17,600.00
First Union National Bank of Newnan (Real Estate Mortgage)	92,500.00
First Union National Bank of Newnan and Clayton County Federal Savings & Loan Association (Real Estate Mortgage)	13,250.00
Citizens & Southern National Bank (Real Estate Mortgage)	27,400.00
First Union National Bank of Newnan (Real Estate Mortgage)	74,000.00

SCHEDULE OF CONTINGENT LIABILITIES

Peachtree National Bank (Purchase money real estate mortgage upon which I am a co-maker)	$ 88,000.00
First Union National Bank of Newnan (Real estate mortgage upon which I am a co-maker)	277,500.00
First Union National Bank of Newnan and Clayton County Federal Savings & Loan Association (Real estate mortgage upon which I am a co-maker)	26,500.00
Citizens & Southern National Bank (Real estate mortgage upon which I am a co-maker)	109,600.00
First Union National Bank of Newnan (Real estate mortgage upon which I am a Guarantor)	366,700.00

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS
LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

December 22, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: JACK T. CAMP
United States District Court
for the Northern District of Georgia

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Jack Camp for appointment as Judge of the United States District Court for the Northern District of Georgia.

A majority of our Committee is of the opinion that Jack Camp is "Qualified" for this appointment. The minority found him to be Well Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

CONFIRMATION HEARING ON: BERNARD A. FRIEDMAN, EMILIO M. GARZA, AND THOMAS S. ZILLY

MONDAY, MARCH 28, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howell Heflin (acting chairman) presiding.

Also present: Senator Thurmond.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Karen Kremer, chief counsel, Subcommittee on Courts; and Frank Klonoski, minority investigator.

Senator **HEFLIN**. This hearing will come to order.

We have several U.S. Senators here to introduce their fellow citizens from the State they represent. At this time, I would like to ask the Senators from Michigan, Senator Riegle and Senator Levin to come forward with your nominee and introduce him.

STATEMENT OF HON. DONALD W. RIEGLE, JR., A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator **RIEGLE**. Thank you, Chairman Heflin. Thank you for allowing me and all of us the opportunity to present to the committee a distinguished constituent of Michigan, the Hon. Bernard Friedman.

Judge Friedman comes before you today as a nominee to fill a vacancy on the U.S. District Court in Michigan's Eastern District. Judge Friedman was born and raised in Detroit, MI, is a graduate of the Detroit Institute of Technology, and received his law degree from the Detroit College of Law in 1968.

He has been an active member of the legal community in our State for the past 20 years. Before his current position in Michigan's 48th District Court, Judge Friedman had an extensive private practice and had worked for the Wayne County Prosecutor's Office. He also writes a weekly column on legal issues for the Oakland County Press.

In his current position, Judge Friedman has demonstrated the highest integrity and is considered to be knowledgeable, compassionate, and dedicated by his colleagues in Michigan. He has conducted his court with dignity and professional objectivity.

Mr. Chairman, Judge Friedman has the experience, judgment and temperament one looks for in a candidate for a Federal judge, and I urge you and the other members of the committee to report favorably upon his nomination.

Thank you.

Senator **Heflin**. Senator Levin.

STATEMENT OF HON. CARL M. LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator **Levin**. Mr. Chairman, it is a real pleasure to be in front of you with Judge Friedman at my side. I represented his parents. When I first got out of law school, I joined a law firm that represented his father, Dr. Friedman, and his mother, Rae Friedman, and they were nice enough to allow a young lawyer to represent them without complaining about it and with a great deal of patience and humor. So I have always felt very close to this family, indeed, and I was delighted when the President nominated Judge Friedman to be a Federal district judge.

As Senator Riegle mentioned, Judge Friedman has been a judge in the 48th District Court in Michigan since 1982. He has received the bar association award of his county for distinguished service in 1985, was named person of the year by the newspaper in his community in 1986.

One of the things that he specializes in is making the law come alive for people. He writes a weekly column entitled "It's Your Court," which is symptomatic of the way he feels about the courts. It is not something separate and abstract, but is something indeed that springs from our society and community and something that the people must feel close to if it is going to function well.

He actually holds sessions of his court in high schools so that school kids can see how a court functions, and he was the founder of the Michigan Law Video Project in an effort, again, to make the courts a reality to people rather than an abstraction.

Again, it is a matter of personal pleasure and pride that I am here with Senator Riegle this morning to introduce Judge Friedman to the Judiciary Committee.

Senator **Riegle**. Mr. Chairman, if I might add one other comment, accompanying Judge Friedman today is his wife, Rozie, seated here behind us. They have two children and we are delighted that they can be together this morning.

Senator **Heflin**. Are there any other friends or anything else that Judge Friedman would like to introduce at this time?

Judge **Friedman**. Mr. Chairman, thank you. Unfortunately, my kids, Matthew and Megan, were unable to be here. However, we have a cousin here who lives in Washington, Rob Addes, who is present here this morning. My parents would have loved to have been here, but again the timing just was not acceptable, Dr. David and Rae Friedman, and I am sorry that they are not here today.

Senator **Heflin**. Well, thank you. I know the Senators are extremely busy and they have things to do, so we will be delighted to have you stay or to be excused.

I am going to ask Senator Phil Gramm to come forward and introduce his nominee.

STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator **Gramm**. Mr. Chairman, let me first say I appreciate having an opportunity to be here today. It is a great honor for me to introduce to you the President's nominee for the District Court of the Western District in the State of Texas, Judge Emilio Garza.

Before I do that, Mr. Chairman, however, I would like to introduce his mother and his brother, both of whom are here, Dionysia Garza and Daniel Garza. Let me just ask them to stand up.

[Ms. Garza and Mr. Garza stood.]

Senator **Heflin**. We are delighted to have you here today.

Senator **Gramm**. Mr. Chairman, Emilio Garza has been an outstanding scholar, an outstanding lawyer, and an outstanding judge. He was valedictorian of his class at Holy Cross High School in San Antonio. He was a distinguished student at Notre Dame where he got a BA and an MA in government and international studies.

He is a graduate of the University of Texas Law School. He was an officer in the Marine Corps. He had a distinguished law practice in numerous civil law areas of practice, and he has served as a district judge in the 225th District Court in San Antonio in Bexar County.

Judge Garza is that rare combination of student of the law and a person who has been very actively involved in most of the things good happening in Bexar County. He is highly respected by the people he has practiced law with and by those who have come before his court, and I believe that he will be an outstanding Federal judge and I am confident that I will always be proud to have recommended him to the President.

Senator **Heflin**. Thank you, Senator Gramm.

Are there any other friends who are with you that you would like to introduce?

Senator **Gramm**. I would like to say, Mr. Chairman, I know Senator Bentsen has submitted a statement of support for the record. I believe that Congressman Albert Bustamante has as well.

Senator **Heflin**. We have both of them and we will make them a part of the record. We have Senator Bentsen's and Congressman Bustamante's.

Senator **Gramm**. Thank you, Mr. Chairman.

[Statements of Senator Bentsen and Congressman Bustamante follow:]

STATEMENT OF SENATOR LLOYD BENTSEN
JUDICIARY COMMITTEE HEARING ON
NOMINATION OF EMILIO M. GARZA
March 28, 1988

Distinguished members of this committee, I am pleased to express my support of Emilio M. Garza as you begin your consideration of his nomination to become a federal district judge in the Western District of Texas. I think Judge Garza will be a fine addition to the Western District, and I urge the committee to speedily approve his nomination and clear the way for confirmation by the full Senate. The Western District has a heavy caseload and greatly needs Judge Garza, and I appreciate the cooperation of the Judiciary Committee in moving his nomination to a hearing expeditiously.

Judge Garza has compiled an impressive academic record, having obtained bachelor's and master's degrees in government and international studies from the University of Notre Dame and his law degree from that fine law school in Austin, my alma mater, the University of Texas. And in his twelve years as a lawyer, Judge Garza has gained valuable litigation experience in his private practice and has served admirably during his brief tenure as a state district judge in San Antonio. In short, he has the legal background and the judicial temperament to serve effectively as a federal district judge.

Moreover, Judge Garza's nomination enjoys broad support in San Antonio, with members of the San Antonio bar from both parties and members of the Hispanic community particularly supportive of the nomination. They recognize the qualifications and important sense of perspective that Judge Garza would bring to the federal bench, and want him to serve in San Antonio.

Again, I appreciate the expeditious manner in which this committee has handled this nomination. I look forward to prompt committee approval and full Senate confirmation of Judge Garza, and to years of dedicated service from Judge Garza in the Western District.

Testimony of U.S. Representative
ALBERT G. BUSTAMANTE
Before the Senate Judiciary Committee
10 A.M., March 28, 1988

Mr. Chairman and Members of the Judiciary Committee, it is always an honor for me to testify before this Committee. Although I planned to testify in person today, I was prevented from doing so because of an unavoidable prior committment.

It is indeed my pleasure to support President Reagan's nomination of Judge Garza to fill the position of Federal District Judge to the Western District Court of Texas.

This position became available when another outstanding jurist, Federal Judge William S. Sessions, was appointed as Director of the Federal Bureau of Investigations (FBI).

As this committee knows, I supported Judge Sessions' appointment as FBI Director. It is now my pleasure to support the nomination of Judge Garza to fill the position vacated as a result of Judge Sessions' appointment.

Prior to my election to Congress, I served as the County Judge to Bexar County, which encompasses most of San Antonio, Texas. I continue to serve that same San Antonio Community, as a large portion of my 23rd Congressional District of Texas includes Bexas County.

Judge Garza has also served this same community as the 225th District Court Judge to Bexar County. The San Antonio Community, therefore, considers Judge Garza as one of its own.

He is precisely the sort of Hispanic jurist that we should encourage to serve in the judiciary, especially in areas with large Hispanic and other minority populations.

Judge Garza is a superb legal professional, who served as an associate and later as a partner in the Texas law firm of Clemens, Spencer, Welmaker & Finck.

As a Member of the House Armed Services Committee, I am also pleased to note that Judge Garza is a former veteran, who served his country admirably in the U.S. Marine Corps. during the period of 1970 to 1973. He continued that military service from 1973 to 1979 with the U.S. Marine Corps. Reserve.

Judge Garza went on to acquire undergraduate and graduate degrees in Government and International Studies from Notre Dame University. He subsequently received in 1976 his law degree from one our country's finest law schools, -the University of Texas School of Law in Austin, Texas.

Since 1976, Judge Garza has been a member of the American Bar Association, the San Antonio Bar Association, and the San Antonio Young Lawyers Association. Judge Garza's rise to the judiciary has been nothing short of meteoric.

In March of 1987, Governor Clements appointed Judge Garza to his current position as State District Judge. Now, no more than a year later, President Reagan has nominated Judge Garza to fill Judge Sessions' prior judicial position.

I am confident that Judge Garza possesses those qualities that will ensure equality and justice in our court system, and am glad to endorse his nomination. Thank you, Mr. Chairman, for allowing me to express my views before this committee.

Senator **Heflin**. Thank you. We would be delighted for you to stay, Senator Gramm, but knowing your schedule, we will understand if you have to go to other duties.

We are delighted to call on Senator Evans and Senator Adams to come forward and introduce their nominee.

STATEMENT OF HON. DANIEL EVANS, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator **Evans**. Thank you, Mr. Chairman. I am proud to introduce as the nominee for the District Court of Western Washington, Mr. Tom Zilly. I have known Tom Zilly for many, many years. He has a distinguished legal career in the city of Seattle, a graduate of the University of Michigan and of Cornell Law School; like the senior Senator from Washington, a former member of the U.S. Navy.

But more importantly, during the last quarter of a century, he has served in increasing positions of responsibility within his firm, one of the largest and most distinguished law firms in the city of Seattle.

He has handled a growing complexity of cases, has, I think, a remarkable record of accomplishment which will serve him in good stead as he takes on his new responsibilities, the committee and the Senate willing.

So I am very proud to introduce him to this committee and I hope that Mr. Zilly at this point will introduce his four sons who are with him and his secretary and her husband.

Mr. **Zilly**. With the Chairman's permission, Senator, I would like to introduce my four sons, John, Peter, Paul, and Luke, who are with me, and my secretary, Carlene Leitner, and her husband, Joe Leitner.

Senator **Heflin**. We are delighted to have them with us.

Senator Adams.

STATEMENT OF HON. BROCK ADAMS, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator **Adams**. Mr. Chairman, it gives me a great deal of pleasure to appear again before the Judiciary Committee to recommend an outstanding and exemplary candidate for the U.S. district court.

Thomas Zilly has my unqualified and complete support, and I hope that this committee will confirm his nomination to the Federal bench. Mr. Chairman, I am very familiar with the District Court of the Western District of Washington. I was a U.S. attorney there for a number of years in the 1960's and I have been a member of that bar for over 35 years.

For the last 15 years, it has been under the guidance and stewardship of one of my close friends, Judge Wally McGovern, who has been a judge's judge. We have had a very fine bench and I can think of no finer person to replace Judge McGovern than Tom Zilly.

Since he has been nominated, I have received many letters of support, Mr. Chairman, from the legal community in Seattle, and there has been a constant theme in the description of Mr. Zilly.

Those that work with him admire his preparation and his organization. He is an extremely capable advocate and he is known for his diligence and discipline. I am very firmly convinced, Mr. Chairman, not only of his intellectual ability, but of his commitment to the legal profession. As Senator Evans said, one of the things that recommends him is that he has not only been president of the Seattle-King County Bar, but as one of the senior members of Lane, Powell, his law firm has done an extraordinary amount of pro bono work during the last number of years.

For example, in 1987 they logged in over 3,500 hours of pro bono work for those who could not afford to be represented. He has solicited members from other firms to do the same.

I can state, Mr. Chairman, and I know from your experience as a judge and mine as a U.S. attorney, that one of the things that always concerns us is fairness of representation and being certain that the case will not be reversed on appeal, but also that people feel and perceive, as well as actually receive, fairness before our courts.

Mr. Zilly is very familiar with this. I think he will be a shining example for the court and I hope, Mr. Chairman, that he will be nominated and he has my full support.

Senator **Heflin**. Well, thank you. We know you are busy. If you would like to stay, we would be delighted to have you, but in the event that you have to go, we are delighted.

Senator Thurmond, do you wish to say anything? We have had the Senators introduce their nominees.

Senator **Thurmond**. Yes. Mr. Chairman, I have been in an Armed Services meeting this morning. I am sorry I could not get here earlier. I just want to welcome these nominees here and congratulate them on their appointment by the President.

I wish to commend Mr. Zilly here for having both Senators, one Democrat and one Republican, endorsing you here, and I think that is a very fine thing you have done to get both of them because, after all, Senators have to confirm nominations, and both these Senators are held in high esteem and it is to your benefit that that is the case.

Thank you very much.

Mr. **Zilly**. Thank you, Senator.

Senator **Heflin**. Thank you.

We will call back now Mr. Bernard A. Friedman. Judge Friedman, if you will come forward and raise your—maybe the best thing is to have each of the three nominees come forward and we will give them the oath at this time.

If you will raise your right hand and repeat after me, I solemnly swear that the testimony that I will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help me God.

Judge **Friedman**. I do.

Judge **Garza**. I do.

Mr. **Zilly**. I do.

Senator **Heflin**. Judge Friedman, if you will have a seat, we will ask you some questions.

Several years ago, you represented a number of white police officers in a suit challenging the affirmative action program that had been instituted by the Detroit Police Department.

At the beginning of the case, you and a number of other attorneys filed a motion seeking disqualification of the trial judge in the case on the grounds that the judge was friendly with the mayor of Detroit.

In ruling on the disqualification motion, the trial judge, Judge Keith, wrote, "The conclusion is inescapable that the likely grounds upon which the plaintiff's motion is based is the fact that I am black, that Mayor Young is black, and that this action was brought by a white policeman seeking to challenge the affirmative action program of the Detroit Police Department, and that therefore it is reasonable to infer that I am somewhat incapable of presiding over this case in a fair and impartial manner."

Looking back on this case now, Judge Friedman, why did you file the motion for disqualification?

TESTIMONY OF BERNARD A. FRIEDMAN, BLOOMFIELD HILLS, MI, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Judge **FRIEDMAN**. First of all, Mr. Chairman, I was one of approximately eight attorneys that were involved in that particular litigation. There was a meeting between the respective clients, and there were many of those, as well as the attorneys.

The clients felt very strongly that such a motion should be filed, not based upon the racial aspects, but based upon the relationship of the trial judge with the mayor, and a committee was formed of the attorneys and that committee decided that that kind of motion at least should be heard because of the importance of the case, because of the appearance of justice, and because of the fact that the clients themselves had certain knowledge which they thought was important to bring before the court.

I might also indicate that though I was involved in that case, I was not directly involved in that particular motion. The case had many tentacles and I was not involved particularly in that motion.

Senator **HEFLIN**. Many judges are friendly with high public officials. Was there any reason to think that the relationship between Judge Keith and Mayor Young was particularly close?

Judge **FRIEDMAN**. Yes, Mr. Chairman. Again, it happened many, many years ago, but my recollection is three-fold. Number one, at about that time an article appeared in the Detroit paper indicating that the mayor and the trial judge had spent Christmas together.

Number two is, whether we agreed or didn't agree, the clients whom we represented had inside information in relation to the whereabouts and the information concerning the mayor because they provided security to the mayor, and their feeling was that there was a special relationship.

The feeling of the committee of attorneys at that time felt that at least it should be explored and therefore the motion was filed.

Senator **HEFLIN**. The subject of this case was affirmative action, which is, of course, a racially-sensitive subject. In considering whether to file the disqualification motion, did you consider whether it would exacerbate the racial tensions in the case?

Judge **FRIEDMAN**. Well, because of the importance of the case, it was the thought of the client, as well as collectively of all the attorneys, that no stone should be unturned; that it was an important case to all citizens, no matter what race they happened to be, of the city of Detroit, and therefore no stone should be unturned; that there should be a 100 percent appearance and conduct of a good and fair hearing.

Therefore, it was thought by all attorneys that each side should be fairly represented and those motions that had any semblance of credibility should be brought.

Senator **Heflin**. Having been a judge yourself for several years, your perspective on the subject of disqualification may be a little different. If you had to do it over now, would you again file a motion for disqualification?

Judge **Friedman**. Again, my beliefs both as a judge and a practicing attorney are that you should litigate all of those issues whenever there is any question as to the appearance of justice, and if a client believes that the appearance of justice is not being created, I believe, whether I am a sitting judge or whether I am a practicing attorney, that those issues should be resolved; that they should be articulated and they should be decided.

Senator **Heflin**. You indicated in response to the committee's questionnaire that about 15 percent of your court appearances in private practice were in Federal court. What kind of Federal cases did you handle?

Judge **Friedman**. I handled a variety of Federal cases. Because of the fact that I represented municipalities, I was involved on an extensive basis especially during the period of time where we had what we considered at one time—when I say "we considered," the traditional Detroit mini-theater cases.

Those were the cases that involved whether or not a city or municipality had a right to zone the locations of adult theaters, adult bookstores, and so forth. I spent time on zoning cases in the Federal court, as well as a whole lot of miscellaneous types of matters.

Senator **Heflin**. I suppose you plan to familiarize yourself with other areas of Federal cases that would come before a Federal judge as you would serve in that capacity.

Judge **Friedman**. Mr. Chairman, I do, and not only do I, but I have been doing so for about the last 4 months. I have been getting lots of literature from the educational arm of the Federal courts. They have been sending me boxfuls and I have been spending many, many, many hours reading it.

Senator **Heflin**. You indicated in response to the committee's questionnaire that you do not anticipate any conflicts of interest arising on the Federal court that would require you to disqualify yourself from ruling on a case.

Has this been your experience on the State court? Have there been no cases in which you have felt it necessary to recuse yourself?

Judge **Friedman**. No, I wouldn't say there has been none. There has been a few cases where I thought it was necessary to recuse myself, but there has been very few.

Senator **Heflin**. You hold stock in a number of companies and bonds in a number of municipal entities. As a Federal judge, you might get a case involving one of those entities. How would you handle that?

Judge FRIEDMAN. It is my understanding that the rules of ethics and fair play are that if, in fact, I own any shares whatsoever that I should disqualify myself. However, it is my intention as to many of those where I have very small holdings or there is no real valid reason to have them to sell them.

Senator HEFLIN. According to your response to the committee questionnaire, you have been involved in the development of materials to educate young people about our laws and legal system. How did you become involved in those efforts?

Judge FRIEDMAN. When I first became a district judge, I started to realize what was happening in the communities in relation to chemicals—and when I say chemicals, I am talking about youth and alcohol and youth and drugs—and felt that it was important for me as a judge not only to sit on the court, but also to express those special kinds of situations that I became aware of to the community and, through that, became active in the community in relation to education of our youth, especially in the area of chemicals, however also in the area of general law and general principles.

Senator HEFLIN. I notice that you have held sessions of your court in high schools. Have these been non-jury cases or have they been jury cases? Would you explain a little bit how that has been done?

Judge FRIEDMAN. Sure. The way it first came about was that I received a phone call from one of the local teachers who teaches a subject that we call street law, and he wanted to bring his class into our courtroom. At that time, and still, our physical facility of our particular courtroom was not great. We are in the process of building a new court building.

We did not have physical room for them, so we started to talk about it and I said, well, why don't I bring my court to the school? I then notified the Michigan Supreme Court to find out whether or not it would be acceptable, and we did so, and we did it with lots of safeguards.

It was not our intention to embarrass anyone. It was our intention to let the students know that the third branch of government, as I refer to it, the judicial branch of government does work and that people do come before it and that we are two things.

Number one is that we are there to serve the people and, number two, is that we are user-friendly. So what we did is we went into the schools. As I say, we took lots of precautions in terms of making sure that any of the cases—this was a general criminal docket that we took in.

Number one, we had the students pick the date so that they did not think we loaded the cases just to show them that we were doing something, and because of the nature of our docket, it did not make any difference what date.

And number two is we provided certain safeguards. We ran it through our computers to make sure that no one lived in that school district so that they would not be embarrassed. We also ran it through the school computers to make sure that there was no cross-reference by last names, and so forth, and also granted adjournments of any attorneys or parties that did not feel comfortable.

The first session turned out to be wonderful. The students were talking about it. The court became living to them, and from that point on it has become nothing but a success.

We did it about a month-and-a-half ago, and at that time we had five judges from the State of Michigan that came down to watch it who are now, for Law Day, going to use the same system in their own communities. It has caught on.

Senator **Heflin**. Did you have the jury there or was it non-jury?

Judge **Friedman**. I am sorry; you asked the question. We did non-jury cases most of the time. We tried a jury case one time and what happened was that it extended over the school period and we had about 40 to 50 percent of the kids that stayed after school to continue to watch it to the conclusion of the jury. The jurors loved it; they thought it was a good experience, but it just took too much time.

Senator **Heflin**. Well, it is interesting. The Supreme Court of Alabama did a little of the same thing. Of course, from the viewpoint of an appellate court, it would be easier to do with arguments, at least as I would anticipate, as opposed to a jury trial, but it is interesting.

If you do not have a prohibition against holding court at a certain location, then there is a freedom to hold it wherever the parties might agree.

Judge **Friedman**. The only prohibition we had was it had to be within our jurisdictional boundaries, which gives us a lot of room.

Senator **Heflin**. As long as the parties agree I do not think there is anyone to complain about it.

Judge **Friedman**. We have never had a complaint, Mr. Chairman. In fact, we now have attorneys that call us and ask that their court date be taken in the high school because they are alumni, or lots of reasons.

We even have students that come before us that say, well, you know, I have a problem and I have gotten over that problem and I do not mind my case—I have gone through treatments or whatever it is; I do not mind my case going up in the high school so when I talk to you, I can tell the students what happened. It has been a fantastic program.

Senator **Heflin**. I understand you write a weekly column for a paper called the Oakland Press, in which you answer readers' questions about legal issues. Is this something you plan to continue doing if you are confirmed for the Federal court?

Judge **Friedman**. It would be hard for me to tell you at this time whether or not I intend to continue it. I would suspect that perhaps somebody that is in the community that is understanding the kinds of issues that are relevant to the community should probably continue it, because I will be obviously at a different court. But at this time I have not really made my mind up.

Senator **Heflin**. Do you think there would be any ethical issues posed by your continuing to write the column?

Judge **Friedman**. I do not believe so. I think one of the duties of a judge is to communicate his or her special knowledge of the law to the citizens, and I think that this kind of writing that I do is consistent with that duty of a judge.

Senator **Heflin**. I understand that the Michigan Bar Association gave explicit approval to State judges writing such columns.

Judge **Friedman**. That is correct. I was not the first; there are many—I should not say "many." There are several judges that write.

Senator **Heflin**. Senator Thurmond, do you have some questions?

Senator **Thurmond**. I just have a couple. Thank you.

Judge Friedman, one of the criticisms of judicial activism is a tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals.

Do you feel that this criticism is valid, and would you please explain your answer?

Judge **Friedman**. I think it may be valid in certain cases. However, I believe that a judge has a duty to limit those issues that are before him or her.

Senator **Thurmond**. Judge Friedman, are there ever any circumstances under which a judge should attempt to establish new judicial precedent, and if so, what criteria would you consider in order to determine the propriety of reversing existing precedent?

Judge **Friedman**. I think as a sitting judge in a district court that I am bound by stare decisis, and therefore believe that I should follow that as a concept.

Senator **Thurmond**. That is all. Thank you.

Judge **Friedman**. Thank you, Senator.

Senator **Heflin**. Thank you, Judge Friedman.

Senator **Thurmond**. I wish you well on the bench.

Judge **Friedman**. Thank you very much. I appreciate this committee's time and effort.

Senator **Heflin**. You are excused right now, and we will call Judge Garza.

Judge Garza, according to your response to the committee's questionnaire, 100 percent of your cases on the State court bench have been civil cases and 95 percent of your cases in private practice were civil cases.

What exactly has been the nature of your experience in the criminal law area?

TESTIMONY OF EMILIO M. GARZA, SAN ANTONIO, TX, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS

Judge **Garza**. Many of the criminal cases I have been involved with have been illegal immigration cases filed in the Western District of Texas. We border Mexico and many of the criminal cases in the western district are criminal immigration cases.

Also, I was involved in probably the longest criminal drug case in the western district. My client, Anselmo Hernandez, was one of 50 individuals that were indicted. I was appointed in early May by the court about 2 or 3 weeks prior to trial and the trial lasted almost 4 months. We did not finish until August.

Senator **Heflin**. I understand that one of the criminal cases you handled by court appointment was a major marijuana conspiracy trial that lasted for 3 months. There were 28 defense lawyers in the case besides yourself. What was the extent of your activity in the case?

Judge GARZA. This was the case that I was referring to. The person that I was appointed to defend allegedly purchased drugs from this group of people.

There were, I believe, five specific instances where it is alleged that he was at a place where purchases occurred. Frankly, my role was minimal as compared to most of the other individuals.

However, the 4 or 5 days he was focused on, I had to take charge of the case. I would like to point out to the committee that when I started trial, I had absolutely no idea, because of my late appointment, what the case amounted to.

In the first 6 weeks of the case, my notes were as voluminous as anybody in court, and after some time the other defense attorneys started coming to me to ask me about the evidence in the case. But my participation in the trial was minimal as compared to the attorneys for the other defendants.

Senator HEFLIN. In the past few years, the Department of Justice brought a number of cases to trial against large groups of criminal defendants. Based on your experience in the 3-month trial, would you be inclined to go forward with such large, multi-defendant cases in your courtroom?

Judge GARZA. That is a real problem. I think that in the future there are going to be more of these cases filed, especially in the Southern parts of the United States. The problem, as I see it, is very major.

There are political and social issues involved, which I am not going to address, which will probably require them. These criminal groups are so massive—at least my minimal experience with this case indicates that—that I think that the only legitimate way of proceeding is through these major trials.

On the other hand, what happened to me is that you are taken from your private practice when you are appointed, and that has really a deleterious effect on one's practice.

Most of the attorneys that were defending these individuals were appointed, and to be away from your practice for 4 or 5 months on a continuous basis is detrimental to a certain extent, but I think it is the wave of the future and it is going to have to be if we are going to get a handle on it.

Senator HEFLIN. You indicate in your response to the committee questionnaire that you are a member of an organization called the Century Club. What does that organization do?

Judge GARZA. It is affiliated with the Hispanic Chamber of Commerce and it is basically invitational. Hispanics in San Antonio were invited as role models to join this forum to increase Hispanic business in our community.

Hispanics, in San Antonio, in Bexar County, comprise 55 percent of the population, but only 10 or 15 percent of the business community. There is a need for greater Hispanic business development.

I am not a businessman and, like I said, I was invited more as a role model, and in that sense I am glad to serve.

Senator HEFLIN. Well, what was the nature of your activities in the Century Club?

Judge **Garza**. Well, almost none so far, other than meeting with people and talking to them. I have met a lot of the community leaders, the Hispanic community leaders in San Antonio.

I do not come from business; I come from the legal community, from the trial bar, and that is my primary interest. This is sort of an important secondary interest.

Senator **Heflin**. Do you know how many Hispanic judges there are on the Federal bench in Texas?

Judge **Garza**. Oh, I would say about four or five.

Senator **Heflin**. I understand that you served for several years on the Pediatrics Review Committee for Seriously Ill and Handicapped Children at the Santa Rosa Medical Center. That committee helped medical personnel resolve some of the thorny ethical issues raised in the treatment of seriously ill and handicapped children.

As a result of that experience, do you have any thoughts on the proper role of the courts in resolving issues of treatment for seriously ill children?

Judge **Garza**. The problem can be articulated this way. Science has outstripped the law. You have now situations where little premature babies can be kept alive at times that pose great ethical questions.

We had one lawsuit—I do not know if this particular committee got involved in it—the *E-Ferol* cases, where physicians were giving Vitamin E to premature infants who had to be given oxygen to survive. However, oxygen caused certain problems with the eyes and Vitamin E was the miracle drug that was going to cure this. A certain pharmaceutical company produced it and it caused death in many children.

In those type of cases, I think the court has to get involved. But it seems to me that because of the advancement of science, parents, hospitals, religious leaders, and other specialists have to get involved in the life and death issues facing seriously ill children. I am not sure that the courts are the best forum by which to solve some of these problems.

They are very specific medical problems that require specialized knowledge and training, not only for judges, but for those people, those health care providers, that need to adress these problems on a daily basis.

Senator **Heflin**. Well, before assuming the State court bench, you worked for years as an advocate in a variety of tort cases, including malpractice, negligence, and product liability cases.

In the course of that representation, you consistently represented one side, the defense. Have you found it difficult in your work as a State court judge to put aside your role as an advocate for defendants and take up the role of impartial decisionmaker?

Judge **Garza**. No, no problem at all. Let me—I want to just address something that I think is extremely important, and I tell this to the individuals that come into my court. Our role as judges is, I think, extremely important.

People come into our courts with all the hope and aspiration of getting a fair and impartial hearing. If a judge is not going to do that, then he has no business being on the bench.

It seems to me that justice is probably the highest virtue that government can practice, and if a judge is not willing to promote that then, like I said, he ought to get off the bench.

Senator **Heflin**. Senator Thurmond, do you have some questions?

Senator **Thurmond**. Thank you very much, Mr. Chairman. I just have a couple.

Judge Garza, I want to congratulate you again upon your appointment.

Judge **Garza**. Thank you, sir.

Senator **Thurmond**. I believe you were recommended by Senator Gramm. He is one of our ablest Senators here. I serve on the Armed Services Committee with him, and he is also a leader in fiscal questions. I have had the privilege of serving with Senator Bentsen a long time, too, and he is a very fine man.

There is frequently a conflict between the deeply-felt constitutional views of a Federal judge and the constraints of judicial precedent. How would you resolve the tension between personal jurisprudence and precedent?

Judge **Garza**. There are four words written up on top of the Supreme Court building, "Equal Justice Under Law."

Senator **Thurmond**. I cannot hear you.

Judge **Garza**. I said that I believe there is a phrase up on top of the Supreme Court building that says "Equal Justice Under Law," and that states the exact responsibility of a judge. The ultimate responsibility of a judge is justice *under law*. It is for us to interpret and apply it fairly, equitably to all, not to presuppose or impose our will. We need to judge it, interpret it, and apply it.

As a district court judge, it is not my responsibility to change the law. To me, stare decisis is important.

Senator **Thurmond**. In other words, you would follow stare decisis?

Judge **Garza**. Exactly.

Senator **Thurmond**. And if there is going to be a change, let the appellate courts do it. I presume that is the way you feel.

Judge **Garza**. Exactly.

Senator **Thurmond**. Judge Garza, Thomas Jefferson remarked shortly after the ratification of the Constitution that, "Our nation's particular security is the possession of a written Constitution; let us not make it a blank paper by construction."

In a great many instances, Federal judges have construed matters in the way that they thought they ought to be rather than just to strictly follow the Constitution. I have always felt that we ought to follow the Constitution. If that is wrong, there is a way to change it. The legislative body can change the Constitution and submit it to the people.

On the other hand, there are some judges that have put construction on matters that I think strain the Constitution, so to speak. How do you feel about that?

Judge **Garza**. Senator Thurmond, you know, again, you need to understand that I come from a legal tradition where reading the law and using it in court, in trial, is my vocation; that is what I do.

It is not for me to decide or to make my own judgments on legal matters. It is for me to read the law, to understand it as best as I am capable of understanding it. It is not my will that should control, but the law, the case authority or the legislative intent. That is what should govern a case, and it should be that way because people can then feel confident in what occurs in the courtroom.

I do not feel that a district court judge should impose his will as opposed to what is already written in the Constitution or the laws of the United States.

Senator **Thurmond**. I do not think I have any other questions. I hope you enjoy your service on the bench.

Judge **Garza**. Thank you very much.

Senator **Thurmond**. Thank you, Mr. Chairman.

Senator **Heflin**. Thank you, judge.

We will call now Mr. Zilly, if he would come forward.

Mr. Zilly, you have devoted a good deal of attention to the problems of bringing more members of minority groups into the legal profession. I note you chaired a special State bar committee on this topic. This is an issue of some interest to this committee.

What are the main obstacles to increasing the number of minority group members in the legal profession? What have you done through the bar association in another context to try to address this problem?

TESTIMONY OF THOMAS S. ZILLY, SEATTLE, WA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

Mr. **Zilly**. Well, Mr. Chairman, I was chairman of a committee to study the reasons why minority people were having trouble passing the bar exam. We studied what was going on at the University of Washington and attempted to come up with recommendations to provide a more meaningful way for an affirmative action program to work.

The University had a special admissions program. We found that the disparity between the level of admissions of those students and the other students was too great and we recommended that that disparity be narrowed slightly; that special courses be provided and made available to those students.

As president of the Seattle-King County Bar Association, I was instrumental most recently in having a new Committee on Minorities in the Legal Profession formed for our voluntary bar association, which has over 4,000 members, the purpose of which is to see that there are more minorities in the legal profession at all levels.

Senator **Heflin**. According to your responses to the committee questionnaire, your litigation experience is exclusively civil in nature. The court to which you have been nominated has a substantial criminal docket.

Do you think your lack of criminal law experience will be an obstacle to successful service on the district court? How do you plan to overcome it?

Mr. **Zilly**. I do not believe it will be an obstacle, Mr. Chairman. I have had 26 years of litigation experience in both the Federal and State courts. I have, as a bar leader, been on various committees working with the courts, both the Federal courts and the State courts, in various civil procedure rule changes.

I have also met with my chief judge already to outline an orientation program to become familiar with all aspects of criminal law. I have just this past week sat through a portion of a criminal law case. I intend to attend the Judicial Center seminars that are put on on all aspects of the Federal practice, including criminal procedures.

Senator **Heflin**. Over the years you have, no doubt, practiced with many excellent lawyers, but you have also been exposed to the other side of the bar with your work in defending legal malpractice cases and your service as a hearing examiner for the Washington State Bar Association.

What are the most common shortcomings in the field of professional responsibility that you have observed among the bar in your State?

Mr. **Zilly**. Well, Senator, there are many reasons for legal malpractice. I think perhaps the most common that I have observed is the lack of the lawyer's willingness or ability to communicate with the client, keep the client closely apprised of the status of the case.

I think that many times the legal malpractice action is generated as a result of a lack of communication between lawyer and client.

Senator **Heflin**. What role can a Federal district judge play in assuring that lawyers who appear before the court live up to the highest standards of competency and professionalism?

Mr. **Zilly**. Well, in the Federal system particularly, I think it is important to manage the cases before the court. The court will therefore become familiar with the lawyers and the issues in the case early on, will set out a scheduling order, will see that the case proceeds towards trial, and should have an early indication as to whether the lawyers are adequately preparing their case for trial.

If I found that they were not, I would take remedial steps to be sure that the issues were being adequately briefed and that the lawyers who were representing their clients were able to do so in a competent manner.

Senator **Heflin**. Another area in which you have been active has been in providing legal services to those who cannot afford them. You said in your questionnaire responses that your primary goal as president of your county bar association last year was to double the number of lawyers participating in volunteer pro bono work.

Did you achieve that goal, and what have been your principal accomplishments in this field both individually and through your bar association activities?

Mr. **Zilly**. I have, over the years, personally represented individuals on a pro bono basis. I have also worked with my firm in promoting a program that we have with Evergreen Legal Services where lawyers from our office literally go over to the Evergreen Legal Services office on a regular basis and bring back files.

In 1986, we spent over 3,500 hours of pro bono time and our partners advanced over $14,000 in costs which were non-reimbursable to promote legal services for the poor.

As a bar leader, my principal and primary goal was to attempt to double the pro bono activities in our community. To that end, we were successful, Mr. Chairman, I am pleased to report, in doubling the number of lawyers on the pro bono panel and substantially increasing the number of law firms who would agree to take cases on a variety of subjects.

Senator HEFLIN. Senator Thurmond, do you have some questions?

Senator THURMOND. Just a couple of questions, Mr. Chairman.

Mr. Zilly, the phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority.

What does the phrase "judicial activism" mean to you?

Mr. ZILLY. Judicial activism means to me the failure of a judge or court to be mindful of the limitations put on them by Article III of the Constitution to decide only actual cases in controversy and to exercise judicial restraint in terms of making a decision.

I think sometimes courts have gone beyond the case in controversy and have extended their rulings beyond what was necessary for the particular case at point.

Senator THURMOND. We have had some judges that have taken over school districts, they have taken over hospitals, they have taken over prisons, they have taken over a lot of State institutions. I do not think that was ever contemplated that such power would reside in a Federal judge.

It seems to me that they ought to exercise what you just mentioned, judicial restraint.

Mr. ZILLY. Senator Thurmond, I entirely agree, and I think that the Federal judges must be always mindful of the concept of separation of powers which is fundamental to our way of life and our Federal Government.

Senator THURMOND. Another thing, too, I wanted to mention is about judicial temperament. I have seen some Federal judges yell or scream at witnesses and lawyers and jurors in the courtroom.

A Federal judge has all the power in the world; he has got the power of life and death in his hands. If there are any people that ought to be courteous, and the most powerful ought to be the most courteous, it is a Federal judge. How do you feel about that?

Mr. ZILLY. I agree a hundred percent, Senator. I think that a Federal judge needs to be fair-minded, open, deliberate, courteous to the lawyers that come before him, and the parties, and then ultimately decisive.

Senator THURMOND. That is all. I wish you well on the bench.

Mr. ZILLY. Thank you very much, Senator.

Senator HEFLIN. You believe, Senator Thurmond, they are appointed and not anointed, I suppose.

Senator THURMOND. That is exactly right, judge. You are a good interpreter.

Senator HEFLIN. That will conclude our hearing, unless there are any other witnesses.

Thank you. We are delighted to see you and we do not anticipate any trouble.

[Whereupon, at 10:53 a.m., the committee was adjourned.]

BERNARD A. FRIEDMAN

Birth:	September 23, 1943	Highland Park, Michigan
Legal Residence:	Michigan	
Marital Status:	Married	Rozanne Golston Friedman 2 children
Education:	1962 - 1965	Detroit Institute of Technology
	1965 - 1968	Detroit College of Law J.D. degree
Bar:	1968 1968	Michigan Florida
Military Service:	12/67 - 5/68	United State Army
Experience:	1969 - 1970	Wayne County Prosecutor's Office Felony Trial Attorney
	1970 - 1974	Harrison, Friedman & Roberson Partner
	1974 - 1978	Harrison & Friedman Partner
	1978 - 1982	Lippitt, Harrison, Friedman & Whitefield Partner
	1982 - present	Judge, 48th District Court State of Michigan
Office:	2709 Telegraph Road Bloomfield Hills, Michigan 48013 313 338-6491 313 338-6488	
Home:	4432 Exmoor Circle Bloomfield Hills, Michigan 48013	

To be United States District Judge for the Eastern District of Michigan

UNITED STATES SENATE
Committee on the Judiciary

QUESTIONNAIRE FOR JUDICIAL NOMINEES

BERNARD A. FRIEDMAN

February 3, 1988

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

BERNARD A. FRIEDMAN

2. Address: List current place of residence and office address(es).

Home - 4432 Exmoor Circle
Bloomfield Hills, MI 48013

Office - 2709 Telegraph Road
Bloomfield Hills, MI 48013

3. Date and place of birth.

September 23, 1943
Detroit, Michigan

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married - Rozanne
Maiden name - Golston
Occupation - Psychotherapist
Square Lake Counseling Center
2550 S. Telegraph Road
Suite 106
Bloomfield Hills, MI 48013

5. Education: List each college and law school you have attended, including dates of attendance, degrees received and dates degrees were granted.

Detroit Institute of Technology
1962-1965

Detroit College of Law
1965-1968
Degree - Juris Doctor (J.D.)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

June, 1969 - October, 1970 -
Wayne County Prosecutor's Office
Frank Murphy Hall of Justice
Detroit, MI 48226

Felony Trial Attorney.

October, 1970 - September, 1974 -
Harrison, Friedman & Roberson
1430 David Scott Building
Detroit, MI 48226

Partner - general practice of law with heavy emphasis on litigation.

(Dalton Roberson resigned from the firm to accept an appointment as Judge of the Recorder's Court for the City of Detroit and the firm moved into new offices.)

September, 1974 - September, 1978 -
Harrison & Friedman
1700 Travelers Towers
Southfield, MI 48075

Partner - general practice continues, but the firm also becomes involved extensively in municipal and labor law.

(Our firm merges with another firm in September, 1978.)

September, 1978 - June, 1982 -
Lippitt, Harrison, Friedman & Whitefield
18860 West 10 Mile Road
Southfield, MI 48075

Partner - general practice continues as above.

June, 1982 - Present -

State of Michigan
48th District Court
2709 Telegraph Road
Bloomfield Hills, MI 48013

Judge.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes.
U.S. Army (Reserves)
9/67 - 9/73
Active duty - 12/27/67 - 5/24/68
Rank - Lt. (J.A.G.)
SS# 373-42-5098
Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Detroit College of Law
Alumni Scholarship - For the Excellence in the Study of Law
1965-1966

Oakland County Bar Association
Distinquished Service Award
December, 1985

West Bloomfield School District
Service Award
May, 1987

Eccentric Newspapers
Named Person of the year
1986 - awarded January, 1987

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

State Bar of Michigan
The Florida Bar
American Bar Association
Oakland County Bar Association
American Judges Association
Michigan District Judges Association
Oakland County District Judges Association

State Bar of Michigan
Co-chairperson of
Crime Education Task Force
1985-1987

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None that are active in lobbying.

Birmingham/Bloomfield Families in Action -
Advisory Board
Michigan SADD (Students Against Driving Drunk) -
Advisory Board
West Bloomfield Optimist
Easter Seals Society of Oakland County, Inc.
Member of the Board of Directors

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse in membership. Give the same information for administrative bodies which require special admission to practice.

Michigan - 1968
Florida - 1968
U.S. District Court, Eastern District of MI - 1968
U.S. Supreme Court - 1971
U.S. Court of Military Appeals - 1972

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I write a weekly column which appears in the Sunday edition of The Oakland Press dealing with questions of law.

I have also written articles for local organizations about the courts, youth, alcohol and drugs.

Representative samples of the above are attached as Appendix 1.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent 1/88

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

State of Michigan
Judge - 48th District Court
Appointed - 6/1/82 (to fill vacancy)
Elected - 11/82 (to balance of term)
Elected -11/86 (6 year term)

Jurisdiction of District Court:

Jury and Non-jury trials
Civil up to $10,000.00
Misdemeanor up to one year
Felony Preliminary Exams
Arraignments and Warrants
Landlord/Tenant
Small Claims
Traffic
Trial Remands from Circuit Court

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

In the course of my judicial duties as a State District Judge, I have not rendered written opinions.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

NONE - However, I served as appointed city attorney for several cities as part of my law practice.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

   NO.

2. whether you practiced alone, and if so, the addresses and dates;

   NO.

3. the dates, names and addresses of law firms of offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

   June, 1969 - October 1970 -
   Wayne County Prosecutor's Office
   Frank Murphy Hall of Justice
   Detroit, MI 48226

   Felony Trial Attorney.

   October, 1970 - September 1974 -
   Harrison, Friedman & Roberson
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   (Dalton Roberson resigned from the firm to accept an appointment as Judge of the Recorder's Court for the City of Detroit and the firm moved into new offices.)

   September, 1974 - September, 1978 -
   Harrison & Friedman
   1700 Travelers Towers
   Southfield, MI 48075

   Partner - general practice continues, but the firm also becomes involved extensively in municipal and labor law.

   (Our firm merges with another firm in September, 1978.)

   September, 1978 - June 1982 -
   Lippitt, Harrison, Friedman & Whitefield
   18860 West 10 Mile Road
   Southfield, MI 48075

   Partner - general practice continues as above.

June, 1982 - Present -
State of Michigan
48th District Court
2709 Telegraph Road
Bloomfield Hills, MI 48013

Judge.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I started with a very general litigation practice.

In about 1976 my practice developed in the area of municipal and labor law, as I was able to attract clients in these areas. I spent a considerable amount of time in these areas but retained the responsibility for many of the general practice areas, including real estate, domestic relations and litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Businesses in the area of litigation, labor, general business and contracts.

Labor organizations.

Municipal governments - in all areas, including litigation, contracts, drafting legislation, prosecution of criminal cases, zoning and boards and commissions.

Individuals - in the area of domestic relations, real estate and legal planning.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently.

For my municipal clients I appeared personally at least one day per week.

Additionally, I was involved in litigation and appeared on motions, hearings and trials frequently.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

Federal Court	15%
State Courts of Record	85%

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

Civil	75%
Criminal	25%

However, for the first 3 - 4 years of my private practice, criminal was about 65% and civil 35%.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As an assistant prosecutor, I was a Felony Trial Attorney and tried 40 -50 felony jury cases to verdict, including 1st degree murder, robbery, assaults and larcenies.

As a City Prosecutor (City Attorney) I have tried hundreds of misdemeanor trials (jury and non-jury) to verdict.

Civil cases approximately 20 have been tried to verdict.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

See above.
Jury - criminal felony - 95%
- criminal misdemeanor - 30%
- civil - 50%
Non-Jury - criminal felony - 5%
- criminal misdemeanor - 70%
- civil - 50%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

See attached Appendix 2.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I was founder of the Michigan Law Video Project, which was a cooperative undertaking between the Oakland County Intermediate School Districts, Bloomfield Hills Public Schools, the Automobile Club of Michigan, for a project using high quality video technology together with the appropriate teachers' manuals to promote students' understanding of the legal process.

More than three hundred copies of the instructional unit known as "Privacy on the Road" have been distributed/purchased in Michigan alone and the project has been recognized by the American Bar Association as making a valuable contribution to the celebration of the bicentennial of the United States Constitution.

I was involved as co-chairperson of the Crime Education Task Force of the State Bar of Michigan. This task force was charged with studying the issue of youth crime through education. The investigations, hearings, discussions and recommendations of this committee will have a long-range effect in providing successful programs to help combat crime through education.

I have also been heavily involved in other avenues of educating our youth, including actually holding sessions of our court in high schools, thus creating an awareness of not only legal procedurs, but also the reality of punishment.

(continued)

I served as City Attorney for several cities which gave me the opportunity of becoming involved in many areas that directly affected the lives of people residing in these communities, including zoning, police protection, drafting of legislation, prosecution of crimes and public housing.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   NONE.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   If there is a conflict, I will disqualify myself, however, I do not anticipate any at this time.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   NO.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   Financial Disclosure Report Attached as
   Appendix 3.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

   See attached Appendix 4.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No - Other than my own when I ran for my present position.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   I am a member of the Board of Directors of the Easter Seal Society of Oakland County.

   The Easter Seal Society is devoted to providing persons with disabilities the opportunity of reaching the maximum of their capabilities and securing opportunities for their education, training and employment.

   I am also very involved in assisting youth and families involved in substance abuse (including alcohol). I serve on the Advisory Boards of the Birmingham/Bloomfield Families in Action and SADD, Michigan, as well as participate in programs at the public and parochial schools and community service groups.

   I spend from 3 to 12 hours per week on the above projects.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership polices? If so, list, with dates of membership. What you have done to try to change these policies?

   NO.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes - there was a Judicial Review Board.
Yes - I was one of the persons recommended
by the Judicial Review Board.

I appeared before the Judicial Review Board and found that the membership included a diverse representation of the bar membership. I had previously filled out a comprehensive questionnaire.

I was asked many questions by various committee members touching upon my legal and judicial knowledge, experience and practice.

I was notified several weeks later that I, along with several other persons, had been recommended and that my name would be submitted as a candidate for further consideration as openings arose.

I was subsequently invited to the Department of Justice on several occasions for interviews. I felt that these interviews were very relevant in relation to my abilities to serve on the U.S. District Court.

In November, 1987, I was notified that I was being considered for the vacancy created by Judge Robert DeMascio taking Senior Judge Status.

I was then provided with background forms for the F.B.I. and the American Bar Association, which I completed and returned.

I have also provided financial, professional and personal data to the Department of Justice and now this Honorable Committee.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

NO.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grieving-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary towards loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal district courts, as all trial level courts, must function pursuant to the doctrine of stare decisis. Therefore, the federal judiciary must view each case as to its specific and particular facts and issues and render decisions drawn narrowly to each case. Relief may be granted to the extent of case law and/or statutory precedent applicable, or if necessary, reasonably analogous to the particular facts at issue in each specific case. Decisions which require the continuous supervision or the administration of the court should be avoided; while decisions which provide an immediate resolution for the parties to their particular situation or grievance should be endeavored to be rendered, and only to the extent that the court has jurisdiction over the parties and issues before it. Decisions should not be rendered unless the parties have standing to litigate the issue(s) specifically raised by them and the issue(s) is/are ripe for decision. Decisions should not invade the provinces of the executive and legislative brances of government, nor seek to impose duties upon the government beyond those required by law.

APPENDIX 3

Section II
Question 4

[illegible]
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]

Reporting Status *(Check Appropriate Box)*

☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

Agency Use Only

OGE Use Only

Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)*

Termination Date *(I*
(Month, Day, Year)

Reporting Individual's Name	Last Name FRIEDMAN	First Name and Middle Initial BERNARD A.
Position for Which Filing	Title of Position U. S. District Cour[illegible] Eastern Dist. Michigan,	Department or Agency *(If Applicable)*
Location of Present Office	Address *(Number, Street, City, State and Zip Code)* 2709 Telegraph, Bloomfield Hills, MI 48013	Telephone No. *(Include Area Code)* (313) 338-6491
Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held None	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination U.S. Senate - Committee on the Judiciary	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual	Date *(Month, Day, Year)*
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Reporting Periods

Incumbents: Complete Schedules A, B, C, and F
reporting period is the preceding calendar year e
II of Schedule C and Part I of Schedule D where
include any positions held or agreements or arrang
from the beginning of the filing year until the d

Termination Filers: Complete Schedules A, B,
of D. The reporting period begins at the end of th
ered by your previous filing and ends at the date

**Nominees, New Entrants and Candidates for P
Vice President:** Complete Schedules A, C, and D
do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (I
Transactions Test (BLOCK D) is the preceding
and the current calendar year up to the date
assets in BLOCK B as of any date you choose
31 days of the date of filing.
- **Schedule C, Part I (Liabilities)**—The reporting
preceding calendar year and the current calen
any date you choose that is within 31 days of th
- **Schedule C, Part II (Agreements and Arrange
any agreements or arrangements as of the d
- **Schedule D**—The reporting period is the p
calendar years and the current calendar year
of filing.

(Check box if comments are continued on th

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U.S. Office of Personnel Management

Reporting Individual's Name BERNARD A. FRIEDMAN	**Assets and Income**	Page Number

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

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		BLOCK A Assets & Income Sources	**BLOCK B** Valuation of Assets							**BLOCK C** Income																
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only If "Other" Specified	Date (Mo., Day, Y Only If Honoraria
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000		
	Example:	X Y Z Common				x				x									x							
		Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$60,000	
	1	48th District Court														salary									88,000	
S	2	Square Lake Counseling Cent.														fees										
	3	Standard Federal Savings I.R.A.			x							x						x								
	4	Connecticut General I.R.A.			x							x							x							
S	5	Standard Federal Savings I.R.A.			x							x						x								
S	6	Fidelity Corporate Appreciation Fund I.R.A.		x						x								x								
	7	State of Michigan Retirement				x						x							x							
	8	State of Michigan 401K		x								x						x								
	9	KEOGH Plan					x					x								x						
	10	Archwood Apartment Assoc. Limited Partnership	x													none									-0-	

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U.S. Office of Personnel Management

Reporting Individual's Name		Page Number
BERNARD A. FRIEDMAN	Assets and Income	3

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

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	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000		
Examples:	X Y Z Common				X				X									X							
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$90,000	
1	Lloyd's Mobile Home Limited Partnership			X						X								X							
2	Friedman Family Investment Partnership -						X											X							
3	investments in 2 real estate limited partnerships -																								
4	KM Saginaw Development and Bellridge Apartments Associates																								
5																									
6	National Bank of Detroit				X						X						X								
7	Pontiac State Bank			X							X						X								
8	Metlife Security Annuity				X						X							X							
9	Harrison, Friedman & Aranosian - partnership			X											none									-0-	
10	vacant property approx. 60 acres Emmet County, MI																								

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FPM Chapter [illegible]
U.S. Office of Personnel Management

Reporting Individual's Name	Assets and Income	Page Number	4.
BERNARD A. FRIEDMAN			

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Filers only: In B
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S or DC		BLOCK A Assets & Income Sources — Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	BLOCK B Valuation of Assets — Category of Value (X): None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	BLOCK C Income — Type of Income (X): Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X): None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria
	Examples:	X Y Z Common				X				X									X							
		Doe Jones & Smith, Hometown, USA			X											ptnrshp income									[illegible]	
1		Bond - Oakland County, MI					X					X									X					
2		Bond - State of Michigan				X						X							X							
3		Litton Ind. - note		X								X						X								
4		U.S. Savings Bonds				X						X							X							
5		Home Ins. - Pref A					X					X								X						
6		Megallen Fund				X						X						X								
7		Merrill Lynch Capital Fund				X				X		X								X						
8																										
9		COMMON STOCK & SHARES:																								
10		Brunswick (130)		X						X							X									

[illegible]
[illegible]
Office of Personnel Management

Reporting Individual's Name			
BERNARD A. FRIEDMAN	**Assets and Income**	Page Number	5.

ll Filers: In BLOCK A report (a) the lentity of each asset held for the producon of income at the close of the reporting eriod which had a fair market value exeding $1000 and (b) any other asset r source of income which generated over 100 in income during the reporting period. his includes but is not limited to emloyers, stocks, bonds, tax shelters, bank ccounts, real property, mutual funds, ensions, IRA assets, assets of certain usts, commodities futures, personal businesses and partnership interests. Exclude our personal residence unless you rent it ut. See instructions for rules on bank ccounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

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BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria
	None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000		
Examples: X Y Z Common				x				x									x							
Examples: Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$30,000	
IBM (165)				x				x									x							
IT&T (54)		x						x								x								
Quaker Oats (846)				x				x								x								
Standard Federal (225)		x						x							x									
Disney (48)		x						x							x									
(Miscellaneous stocks, however value less than $1,000.)																								
Vacant property - 15 acres Atlas Township, MI					x									none									-0-	
Automobiles				x										none									-0-	
Personal Effects				x										none									-0-	

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Reporting Individual's Name
BERNARD A. FRIEDMAN

Page Number 6.

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☒

S or DC		Identification of Assets	Type of Transaction (X)				Amount of Tr		
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000
	Example:	XYZ Common	X			2/1/83			X
1		None - not applicable							
2									
3									
4									
5									
6									

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only: Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☒

S		Source (Name and Address)	Brief Description	
	Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	
1		None - not applicable		
2				
3				
4				
5				
6				

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278-100

SF 278 (Rev. 1/88)
FPM Chapter 734
U.S. Office of Personnel Management

Reporting Individual's Name
BERNARD A. FRIEDMAN

Page Number

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amo		
							$10,001 to $15,000	$15,001 to $50,000	$50,0 to $100,0
S or DC	Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X		
1		Clyde & Francis Lewis, Box 149, Goodrich, MI 48438	land contract on vacant property	1987	10	5 yr		x	
2									
3									
4									
5									
6									

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

Status and Terms of any Agreement or Arrangement		Parties
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA
None		

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SF 278 (Rev. 1/83)
FPM Chapter 734
U.S. Office of Personnel Management

Reporting Individual's Name BERNARD A. FRIEDMAN	Page Number 8.

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/83	6/
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/
	State of Michigan, 48th District Court,	State of Michigan	Judge	6/82	pr
	2709 Telegraph Road, Bloomfield Hills, MI 48013				
	Easter Seals Society of Oakland County,	Non-profit	Member of the Board	9/85	pr
	1105 N. Telegraph Road, Pontiac, MI 48053				

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	State of Michigan, 48th District Court	Salary as Judge

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278-108

APPENDIX 4

Section II
Question 5

FINANCIAL CONDITION

BERNARD A. AND ROZANNE FRIEDMAN

Compiled Statement of Financial Condition

December 31, 1987

Seidman
&
Seidman
BDO

Seidman
&
Seidman | BDO
755 West Big Beaver, Suite 1700, Troy, Michigan 48084 (313) 362-2100

January 8, 1988

Bernard A. and Rozanne Friedman
Birmingham, Michigan

We have compiled the accompanying statement of financial condition of Bernard A. and Rozanne Friedman as of December 31, 1987, together with the supplemental schedules of marketable securities and partnership investments on pages 5 and 6, in accordance with standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting, in the form of financial statements, information that is the representation of the individuals whose financial statement is presented. We have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or any other form of assurance on it.

Generally accepted accounting principles require that personal financial statements include a provision for estimated income taxes on the differences between the estimated current values of assets and the estimated current amounts of liabilities and their tax bases. The accompanying statment of financial condition does not include such a provision, and the effect of this departure from generally accepted accounting principles has not been determined.

Seidman & Seidman

BERNARD A. AND ROZANNE FRIEDMAN

STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 1987

ASSETS

CASH AND CASH EQUIVALENTS (Note 2)	$ 38 500
INVESTMENTS:	
Annuity insurance policy	14 300
Marketable securities	264 700
Partnerships	202 000
Real estate (Note 3)	67 500
U.S. Savings bonds	15 700
VESTED INTEREST IN RETIREMENT PLANS (Note 4)	130 000
AUTOMOBILES	21 000
PERSONAL RESIDENCE - WEST BLOOMFIELD, MICHIGAN (Note 5)	236 000
PERSONAL EFFECTS	30 000
	$ 1 019 700

LIABILITIES AND NET WORTH

MORTGAGE PAYABLE - RESIDENCE (Note 5)	$ 60 300
LAND CONTRACT PAYABLE (Note 3)	42 500
INCOME TAXES - CURRENT YEAR'S BALANCE	1 500
TOTAL LIABILITIES	104 300
NET WORTH	915 400
	$ 1 019 700

BERNARD A. AND ROZANNE FRIEDMAN

NOTES TO FINANCIAL STATEMENT

NOTE 1 - SUMMARY OF ACCOUNTING POLICIES

The accompanying financial statements include the assets and liabilities of Bernard A. and Rozanne Friedman. Assets are stated at their estimated current values and liabilities at their estimated current amounts, submitted by Bernard A. Friedman.

NOTE 2 - CASH AND EQUIVALENTS

Cash was comprised of the following:

Checking accounts	$ 1 500
Certificates of deposit	24 200
Cash equivalent fund	12 800
	$ 38 500

NOTE 3 - LAND CONTRACT PAYABLE

Land contract payable in monthly installments of $500 including interest at 10% per annum, collateralized by land located in Atlas Township, Michigan, maturing November, 1992	$ 42 500

NOTE 4 - VESTED INTEREST IN RETIREMENT PLANS

The information relating to the values listed below were determined based upon the most recent valuations available.

Individual Retirement Accounts	$ 32 200
Defined Benefit Keough Plan	75 000
State of Michigan - Judges Retirement System and 401-K Plan	22 800
	$ 130 000

NOTE 5 - MORTGAGE PAYABLE

Mortgage payable, Capitol Savings payable in monthly installments of $539 including interest at 9.75% per annum, collateralized by personal residence, maturing in 2006	$ 60 300

BERNARD A. AND ROZANNE FRIEDMAN

SUPPLEMENTAL SCHEDULE OF MARKETABLE SECURITIES
DECEMBER 31, 1987

	Face or Shares	Market Value
MUNICIPAL BONDS:		
Oakland County, Michigan; 4.3%; due 8-1-89	$ 95 000	$ 90 500
State of Michigan Strategic Bond; 6%; due 12-1-90	$ 20 000	19 200
NOTE:		
Litton Industries; 11%	$ 1 000	1 000
STOCKS:		
Brunswick Corp.	130	1 800
Communication Satellite	10	200
Ford Motor Co.	1	100
General Motors Corp.	1	100
Home Insurance Co., Pref. A	3 000	64 100
IBM	165	18 200
IT&T	54	2 300
Megallen Fund		2 500
Merrill Lynch Capital Fund, Inc.	1 148	23 000
National Bank fo Detroit	21	600
Quaker Oates	846	36 400
Standard Federal Savings	225	2 100
Walt Disney World	48	2 600
Sterling Drugs	1	-
Southern Co.	3	-
Spartan Capital	200	-
Unidynamics	1	-
K-Mart Corp.	1	-
K-M-S Industries	12	-
Pan Am	20	-
		$ 264 700

BERNARD A. AND ROZANNE FRIEDMAN

SUPPLEMENTAL SCHEDULE OF PARTNERSHIP INVESTMENTS
DECEMBER 31, 1987

Description	Percent of Ownership	Fair Market Value
Archwood Apartments Associates, - Limited Partnership	3.030	$ 8 000
Harrison, Friedman and Aranosian	33.333	8 000
Friedman Family Investments	33.333	174 000
Lloyd's Mobile Home - Limited Partnership	2.571	12 000
		$ 202 000

AMERICAN BAR ASSOCIATION

Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
James A. Howard, Sr.
1490 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

February 19, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: BERNARD A. FRIEDMAN
United States District Court
for the Eastern District of Michigan

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Bernard A. Friedman for appointment as Judge of the United States District Court for the Eastern District of Michigan.

A substantial majority of our Committee is of the opinion that Judge Friedman is "Well Qualified" for this appointment. The minority found him to be Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

EMILIO M. GARZA

Birth:	August 1, 1947	San Antonio, Texas
Legal Residence:	Texas	
Marital Status:	Single	
Education:	1965 - 1969	University of Notre Dame B.A. degree
	1969 - 1970	University of Notre Dame M.A. degree
	1973 - 1976	University of Texas School of Law J.D. degree
Bar:	1976	Texas
Military Service:	1970 - 1973	United States Marine Corps
Experience:	1976 - 1987	Clemens, Spencer, Welmaker & Finck Associate (1976-1982) Partner (1982-1987)
	1987 - present	District Judge 225th District Court Bexar County
Office:	225th District Court 206 Stumberg San Antonio, Texas 76204 512 220-2233	
Home:	6070 Roft Road San Antonio, Texas	

To be United States District Judge for the Western District of Texas

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Emilio Miller Garza

2. Address: List current place of residence and office address(es).

   Residence:

   6070 Roft Road
   San Antonio, Texas 78253

   Office:

   225th District Court
   206 Stumberg
   San Antonio, Texas 78204

3. Date and place of birth:

   August 1, 1947
   San Antonio, Texas

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Single.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   University of Notre Dame, Notre Dame, Indiana, 1965-1969, B.A. in Government and International Studies

   Trinity University, San Antonio, Texas, June-August 1966 (Summer Session only), 6 hours of Spanish

   University of Notre Dame, Notre Dame, Indiana, 1969-1970, M.A. in Government and International Studies

   University of Texas at Austin, Austin, Texas, June-August 1970 (Summer Session only), 12 hours of German

   The University of Texas School of Law, Austin, Texas, 1973-1976, J.D.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Bus Boy - Short Order Cook, Faculty Club, University of Notre Dame (Summer 1969)
United States Marine Corps (active duty: 1970-1973)
Legal Intern, Office of the Attorney General of Texas (1974-1975)
Associate - Clemens, Spencer, Welmaker & Finck (1976-1982)
Partner - Clemens, Spencer, Welmaker & Finck (1982-1987)
District Judge, 225th District Court, Bexar County, Texas (April 3, 1987-present)
(Appointed by Governor Clements, March, 1987)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes.

1970-1973 - Active Duty, United States Marine Corps.

1973-1979 - Class III Reservist, United States Marine Corps Reserve.

Captain, 455-76-3625.

Honorable Discharge; March 1, 1979.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Dean's List 1968-1969, University of Notre Dame.

9. Bar Memberships: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

San Antonio Bar Association (1976-Present)
San Antonio Young Lawyers Association (1976-1981)
State Bar of Texas (1976-present)
American Bar Association (1976-present)

Section of Litigation (1976-present)
Section of Health Law (1976-1987)
Texas Association of Defense Counsel (1978-1987)

I was recently selected to be one of a three-member Ethics Committee for the Bexar County District Courts to review possible conflict of interest allegations lodged against the Civil Jury Docket Administrator.

I was also selected on a judicial committee to recommend improvements to the Bexar County Child Support Registry.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

Our Lady of Guadalupe Catholic Church, Helotes, Texas (President, Parish Council: 1980-1982; lector: 1982-present; communion minister: 1985-present)
Symphony Society of San Antonio, 109 Lexington (Member, Board of Directors: 1987-present)
Century Club, 110 Broadway, San Antonio, Texas (Affiliated with Hispanic Chamber of Commerce: 1987-present)
Republican Men's Club of Bexar County (1987-present)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Texas (November 1, 1976).
United States Tax Court (December 1, 1977).
United States District Court, Western District of Texas (December 20, 1977).
United States Court of Appeals for the Fifth Circuit (July 28, 1980).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent; 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

District Judge
225th District Court
Bexar County, Texas
(April 3, 1987-present)
(Appointed by Governor Clements, March, 1987)

By statute, the court has both civil and criminal jurisdiction; however, by local rule, this court handles exclusively civil matters.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

None.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

   No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

   Law Practice:

   Associate - Clemens, Spencer, Welmaker & Finck (1976-1982)
   Partner - Clemens, Spencer, Welmaker & Finck (1982-1987)

   Judicial Experience:

   District Judge
   225th District Court
   Bexar County, Texas
   (April 3, 1987-present)
   (Appointed by Governor Clements, March, 1987)

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

   General civil practice with emphasis on litigation and insurance defense work. Trial and appellate work has included: negligence, product liability, medical malpractice, hospital malpractice, dental malpractice, architect malpractice, contracts, fraud, deceptive trade practice, taxes, libel and slander, injunctions, warranties, real estate, probate, family law, criminal RICO, criminal conspiracy and criminal immigration law.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

   Litigation/insurance defense clients have included: Santa Rosa Medical Center, K-Mart, Chrysler Corporation, Sears, FMC, New York Life Insurance, Metropolitan Insurance, Prudential, Southwest General Hospital, Emergency Physicans Affiliates, individual physicians and dentists, O.F. Mossberg & Sons, Inc., Sidermex International, Inc., Harkins & Co., The Atlantics Companies, Cessna Finance Corp., Mutual of Omaha, Church's Fried Chicken, Inc., Southwest Lift Trucks.

Personal clients have included Cordi-Marian Sisters, Inc. and Cordi-Marian Village, Inc.

Specialties: Litigation; medical and hospital malpractice.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly.

2. What percentage of these appearances was in:

(a) federal courts;	30%
(b) state courts of record;	70%
(c) other courts.	0%

3. What percentage of your litigation was:

(a) civil;	95%
(b) criminal.	5%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 37 cases as sole counsel; an additional 7 as associate counsel.

5. What percentage of these trials was:

(a) jury;	52%
(b) non-jury.	27% non-jury
	21% summary judgment

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

First case:

a. Style, number, court and date.

Amalia Guedea-Nelson, et al. v. Sudhir Pre Srivastava, et al. No. 85-CI-05825. 73rd District Court of Bexar County, Texas, before the Honorable Carolyn Spears, December 4, 1986.

La June Wunsch, Individually and on behalf of the Estate of Mattie L. York v. Sudhir Prem Srivastava, et al. No. 85-CI-06597. 224th District Court of Bexar County, Texas, before the Honorable Carolyn Spears, December 4, 1986.

b. Brief summary and importance of case.

This was a medical malpractice action against two physicians and my client, Santa Rosa Medical Center, which had revoked these physicians' medical privileges. Certain committee minutes were obtained from an unknown source by a reporter for a television station which broadcasted a five-part series on Santa Rosa Medical Center's investigations. The representatives of two patients filed suit against the physicians and Santa Rosa Medical Center alleging the wrongful death of one patient and injuries resulting in brain insult to the second. On a Motion for Production, the Honorable Carolyn Spears held that such minutes were no longer protected under TEX. REV. CIV. STAT. ANN. art. 4447d, section 3 (Supp. 1986). Santa Rosa Medical Center filed its Petition for Writ of Mandamus. The Court of Appeals held that (1) such minutes were privileged, and (2) Santa Rosa Medical Center had not waived such privilege. Further, it held the trial court abused her discretion in compelling Santa Rosa Medical Center to authenticate such minutes, but more importantly held the committee members could not be examined or compelled to testify about any matters that came to their attention while acting in furtherance of such committee purpose and function. The importance of this holding lies in the fact that no prior court had articulated that such privilege extended beyond the mere records and minutes generated by such committee. Because of such holding, one case was dismissed against Santa Rosa Medical Center; the second case settled because of evidence discovered other than from the stolen minutes. Santa Rosa Medical Center v. Spears, 709 S.W.2d 720 (Tex. App.--San Antonio 1986, no writ).

c. Name, address and telephone number of all counsel.

Mr. Clem Lyons
Southers & Lyons, Inc.
126 Villita
San Antonio, Texas 78205
(512) 225-5121
Attorney for Plaintiffs

Mr. Fred Shannon
Martin, Shannon & Drought
2500 InterFirst Plaza
San Antonio, Texas 78205
(512) 227-7591
Attorney for Sudhir Prem Srivastava

Mr. Jerry Gibson
Plunkett, Gibson & Allen
Post Office Box BH-002
San Antonio, Texas 78201
(512) 734-7092
Attorney for Bakthavathsalam Athreya

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building
San Antonio, Texas 78205
(512) 227-7121
Attorney for Santa Rosa Medical Center

Second Case:

a. Style, number, court and date.

Aurora Saenz v. Carlos Portales, D.D.S. No. 85-CI-19994. 131st District Court, Bexar County, Texas, before the Honorable Rose Spector, February 17, 1987.

b. Brief summary and importance of the case.

This was a dental malpractice case alleging the negligent severing of a nerve during an extraction, and the last state district court case I tried before assuming the bench. Because all parties had to acknowledge numbness to one side of the face, we were faced with the difficulty of trying to convince the jury that a bad result did not necessarily mean that Dr. Portales was negligent. One oral surgeon from Dallas, one dentist and one psychiatrist from San Antonio testified against Dr. Portales. The jury found for my client, Dr. Portales.

c. Name, address and telephone number of all counsel.

Mr. George Mauze, II
3308 Broadway
San Antonio, Texas 78209
(512) 822-8150
Attorney for Aurora Saenz

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building
San Antonio, Texas 78205
(512) 227-7121
Attorney for Carlos Portales, D.D.S.

Third Case:

a. Style, number, court and date.

Howell Crane Service v. California Union Insurance Company and FMC. Cause No. SA-85-CA-1088. United States District Court for the Western District of Texas, San Antonio Division, before the Honorable William S. Sessions, January 26, 1987.

b. Brief summary and importance of the case.

This was a product liability, warranty, negligence suit against my client, FMC, the manufacturer of a crane which failed during operation, and the last civil federal district court case tried before assuming the bench. After a week of trial, a jury found for FMC. This case involved complex engineering concepts which had to be simplified for the jury's understanding, and a theory of the case which had to match undisputed photographic evidence of failure.

c. Name, address and telephone number of all counsel.

Mr. James N. Higdon
Higdon & Bass
9002 Wurzbach Road
San Antonio, Texas 78240
(512) 696-8281
Attorney for Howell Crane Service

Mr. Thomas E. Quirk
Beckman & Quirk
1200 Frost Bank Tower
San Antonio, Texas 78205
(512) 224-1871
Attorney for California Union Insurance Co.

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building

San Antonio, Texas 78205
(512) 227-7121
Attorney for FMC

Fourth Case:

a. Style, number, court and date.

United States of America v. Anselmo Hernandez-Molina. Cause No. SA-85-CR-329(27). United States District Court for the Western District of Texas, San Antonio Division before the Honorable Edward C. Prado, May 20, 1986 to September 4, 1986.

b. Brief summary and importance of the case.

In this three-month criminal trial, I was appointed on May 2, 1986, and was required to prepare a defense by May 20, the date trial commenced. The indictment against my client alleged violation of RICO, RICO conspiracy, and conspiracy to distribute in excess of 1,000 pounds of marihuana. Approximately 50 individuals were indicted, 20 of those were tried in May. The news media titled this case "the cash crop" case. My client was found not guilty of RICO and RICO conspiracy; he was, however, found guilty of conspiracy. This is reputed to have been the longest criminal trial in the Western District.

c. Name, address and telephone number of all counsel.

Mr. Charles Lewis
Mr. Todd Foster
Office of the United States Attorney
Post Office Box 61129
Houston, Texas 77208

Mr. Alan Brown
Attorney at Law
222 Main Plaza
San Antonio, Texas 78205
(512) 227-5103

Mr. Anthony Nicholas
Mr. Roy Barrera, Sr.
424 East Nueva
San Antonio, Texas 78205
(512) 224-5811

Mr. Abraham Kazen III
702 Colorado, Suite 402
Austin, Texas 78701

Mr. David Almaraz

Post Office Box 6875
Laredo, Texas 78042

Mr. Mark Stevens
442 Dwyer Avenue
San Antonio, Texas 78204
(512) 226-1433

Mr. Steve Orr
812 San Antonio Street, Suite 211
Austin, Texas 78701

Mr. Alfonso Gonzalez
6205 Vincent
Corpus Christi, Texas 78412

Mr. Paul Schiffer
Mr. R. K. Hansen
1001 Texas, Suite 500
Houston, Texas 77002

Mr. Albert A. Pena III
615 Waco
Corpus Christi, Texas 78401

Mr. Charles Campion
Mr. Bernard Campion
222 Main Plaza East
San Antonio, Texas 78205
(512) 227-5161

Mr. R. Clark Adams
Assistant Federal Public Defender
727 East Durango Boulevard, Suite B-138
San Antonio, Texas 78205
(512) 229-6700

Mr. Juan J. Hinojosa
5921 North 23d Street
McAllen, Texas 78504

Mr. Vincent D. Callahan
442 Dwyer
San Antonio, Texas 78204
(512) 226-6808

Mr. Jose Luis Ramos
Post Office Box 314
Hebbronville, Texas 78361

Mr. Greg Frazer
Mr. David Eisen
3223 Smith, Suite 110
Houston, Texas 77006

Mr. Michael J. Green
180 North LaSalle, Suite 400
Chicago, Illinois 60601

Mr. Sheldon Weisfeld
Post Office Drawer 1231
Brownsville, Texas 78520

Mr. Thaddeus H. Speiser
3934 West 26th Street, Room 201
Chicago, Illinois 60623

Mr. Robert Rodriguez
5401 North Tenth Street, Suite 101
McAllen, Texas 78504

Mr. John A. Hrncir
1515 Tower Life Building
San Antonio, Texas 78205
(512) 222-0396

Mr. Ed Medrano
1101 West Tyler
Harlingen, Texas 78550

Mr. Bernie Martinez
One Alamo Center, Suite 600
San Antonio, Texas 78205

Mr. Hector Villarreal
400 East Cano
Edinburg, Texas 78539

Mr. Eric G. Brown
Post Office Box 276
Corpus Christi, Texas 78403

Mr. James S. Bates
3105 South Highway 281
Edinburg, Texas 78539

Mr. Gerald H. Goldstein
2900 Tower Life Building
San Antonio, Texas 78205
(512) 226-1463

Mr. Jack Pytel
630 Broadway
San Antonio, Texas 78215
(512) 226-8365

Mr. Frederick John Deyeso, Jr.
9601 McAllister Freeway, Suite 1290

San Antonio, Texas 78216
(512) 344-3030

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building
San Antonio, Texas 78205
(512) 227-7121

Fifth Case:

a. Style, number, court and date.

Deborah Ann Spiva, et al. v. John P. Whitaker, Jr., M.D., et al. No. 86-CI-03083. 57th District Court, Bexar County, Texas, before the Honorable Carol R. Haberman, on May 19, 1986.

b. Brief summary and importance of the case.

This was a defamation action brought by the Plaintiff after her license to practice medicine was suspended by the Texas State Board of Medical Examiners alleging false and defamatory statements at the board hearing and at various peer review committee meetings, after which her privileges to practice at such hospitals were suspended. This suit, filed early in 1986, was one of the first suits to challenge the various evidentiary privileges which protected peer review proceedings at the hospital level and license revocation hearings at the state level. A corollary legal issue revolved around the ultimate liability of a hospital, if any, for defamatory statements made by physician/independent contractors who served on hospital peer review committees. Thirdly, a legal determination had to be made whether such was an absolute or qualified privilege. These legal matters were presented by way of summary judgment, and judgment was rendered for my client, Victorio Rodriguez, M.D.

c. Name, address and telephone number of all counsel.

Mr. James Branton
Branton, Warncke, Hall & Gonzales, P.C.
225 Travis Park Plaza Building
San Antonio, Texas 78205
(512) 227-4474
Attorney for the Plaintiffs

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building
San Antonio, Texas 78205-1598
(512) 227-7121

Attorney for Victorio Rodriguez, M.D.

Sixth Case:

a. Style, number, court and date.

Kim Newland v. Marvin A. Rubin, et al. No. 84-CI-07572. 285th District Court, Bexar County, Texas, before the Honorable Carol R. Haberman, November 20, 1985.

b. Brief summary and importance of case.

This was a libel and malpractice suit filed against a clinical psychologist and my client, a psychiatrist, alleging false accusations by the defendants that the Plaintiff had committed sexual crimes and illegally taken controlled substances. The case as to my client, Joe Stevens, M.D., was primarily based on a theory of vicarious liability and was an attempt to expand the doctrine of respondeat superior to include the clinical psychologist-psychiatrist relationship; other allegations included violations of professional duties to the petitioner by both the clinical psychologist and medical psychiatrist. After a year and a half of discovery, a motion for summary judgment was filed alleging independent contractor, no defamatory statements by Dr. Stevens and/or an absolute and/or qualified privilege. The motion for summary judgment was granted for Joe B. Stevens, M.D. only, and the other Defendants remained in such suit.

c. Name, address and telephone number of all counsel.

Mr. Jackson Speed
5108 Broadway, Suite 212
San Antonio, Texas 78209
(512) 828-6691
Attorney for the Plaintiff

Mr. Harold D. Putman
1019 Tower Life Building
San Antonio, Texas 78205
(512) 226-0221
Attorney for Defendants
Marvin A. Rubin
and Edith S. Rubin

Mr, Sten Langsjoen
1900 Tower Life Building
San Antonio, Texas 78205
(512) 224-5406
Attorney for Mayin Lau

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building
San Antonio, Texas 78205
(512) 227-7121
Attorney for Joe Stevens, M.D.

Seventh Case:

a. Style, number, court and date.

Pleas R. Smith, et al. v. Baptist Memorial Hospital System, et al. No. 81-CI-08427. 166th District Court, Bexar County, Texas, before the Honorable Raul R. Rivera, February 1, 1984, and the Honorable Carol R. Haberman, December 5, 1985.

b. Brief summary and importance of case.

This was a medical malpractice case arising from a sudden respiratory arrest subsequent to penicillin injections, necessitating an emergency tracheostomy performed by Harry M. Henderson, M.D. The Plaintiffs sued Dr. Henderson, the Emergency Room Physician; the Baptist Memorial Hospital System, owner of the Northeast Baptist Hospital, at which emergency room the incident in question took place; and Emergency Physicians Affiliates (EPA), a non-professional partnership which arranged physician scheduling for such emergency room. EPA, my client, filed two motions for summary judgment, the first was partially granted as to all allegations except one, the second was granted as to the remaining allegation.

This was one of the first ostensible agency, vicarious liability malpractice action attempting to extend physician liability to hospitals and third-party physicians in charge of arranging for the physician scheduling at such emergency rooms.

Such judgment was appealed to the Court of Appeals of Texas which reversed and remanded the case for trial. The Supreme Court of Texas refused our client's application for writ of error. Pleas Smith, et al. v. Baptist Memorial Hospital System, et al. 720 S.W.2d 618 (Tex. App.--San Antonio 1986, writ ref'd n.r.e.).

c. Name, address and telephone number of all counsel.

Mr. Andrew Todesco
Perdue, Turner & Berry

Post Office Box 1364
Houston, Texas 77251-1364
(713) 117-1403
Attorneys for Plaintiffs
Pleas R. Smith, as Guardian of the
Person and Estate of Evan W. Smith, Jr.,
Mentally Incompetent

Ms. R. Jo Reser
Groce, Locke & Hebdon
2000 Frost Bank Tower
San Antonio, Texas 78205
(512) 225-3031
Attorney for Baptist Memorial System

Mr. Paul M. Green
Lang, Cross, Ladon, Boldrick & Green
1565 Frost Bank Tower
San Antonio, Texas
Attorney for Harry Henderson, M.D.

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building
San Antonio, Texas 78205
(512) 227-7121
Attorney for EPA

Eighth Case:

a. Style, number, court and date.

Nolan Norton v. Command Post, Inc., et al. No. 83-CI-07811. 45th District Court, Bexar County, Texas, before the Honorable James C. Onion, from June 25, 1984 through June 28, 1984.

b. Brief summary and importance of case.

This was a negligence cause of action alleging that the Plaintiff, as a business invitee on the premises of South Park Mall, tripped and fell on an electrical wire negligently placed and/or maintained upon the floor during the presentation of a show produced by my client, David Cruz, d/b/a Image Builders and/or Image Builders, Inc. After the presentation of the Plaintiff's case-in-chief, Judge Onion directed a verdict in favor of my client.

c. Name, address and telephone number of all counsel.

Mr. James R. Warncke
711 Navarro Street, Suite 327
San Antonio, Texas 78205

Mr. Keith B. O'Connell
400 InterFirst Financial Center, N.W.
Post Office Box BH002
San Antonio, Texas 78201
(512) 734-7092
Attorney for Command Post, Inc.

Mr. Jerry M. Simon
222 Main Plaza
San Antonio, Texas 78205
(512) 225-5265
Attorney for Bexar Audio Visual, Inc.

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building
San Antonio, Texas 78205
(512) 227-7121
Attorney for David Cruz,
d/b/a Image Builders and Image Builders, Inc.

Ninth Case:

a. Style, number, court and date.

Alex Ortiz v. Santa Rosa Medical Center, William D. Lane, d/b/a Pulse Ambulance, and Ben M. Moore, Jr., M.D. 45th District Court, Bexar County, Texas, before the Honorable James C. Onion, from February 13, 1984 through February 17, 1984.

b. Brief summary and importance of case.

This was a medical malpractice action alleging negligence by employees of the hospital and vicarious liability for the acts of the Emergency Room doctor. Trial commenced on February 13, 1984 and evidence closed on February 17, 1984 at which time the court instructed the jury to render a verdict in favor of the Defendants. This case was later appealed as to both Defendants, but prior to oral arguments, Plaintiff dropped his appeal as to my client, Santa Rosa Medical Center. This case was one of the earliest attempts in Bexar County to hold hospital liable for the acts of staff physicians. The case was very dangerous since the Plaintiff expired minutes after arriving at the Bexar County Hospital Emergency Room and after being treated, examined, and transferred by the physician in charge of the Santa Rosa Medical Center Emergency Room.

c. Name, address and telephone number of all counsel.

Mr. Jeffrey Anderson

case was very dangerous since the Plaintiff expired minutes after arriving at the Bexar County Hospital Emergency Room and after being treated, examined, and transferred by the physician in charge of the Santa Rosa Medical Center Emergency Room.

c. Name, address and telephone number of all counsel.

Mr. Jeffrey Anderson
Mr. David M. Atkinson
Southers & Lyons, Inc.
126 Villita
San Antonio, Texas 78205
(512) 225-5251
Attorney for the Plaintiff

Mr. Paul M. Green
Lang, Cross, Ladon, Boldrick & Green
1565 Frost Bank Tower
San Antonio, Texas 78205
(512) 227-3106
Attorney for Ben M. Moore, Jr., M.D.

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building
San Antonio, Texas 78205
(512) 227-7121
Attorney for Santa Rosa Medical Center

Tenth Case:

a. Style, number, court and date.

Lee W. Ledbetter v. Reserve Life Insurance Company. 166th District Court, Bexar County, Texas, before the Honorable Fred Biery, from February 28, 1983 through March 1, 1983.

b. Brief summary and importance of case.

This was a suit on a major medical expense policy defended on the basis that the "sickness" which was the basis of the "loss," as both terms were defined in the policy, did not "first mainfest itself while this policy (was) enforced," but rather before the effective date of the policy. The Plaintiff's physician testified on her behalf, although his medical records reflected numerous symptoms of gall bladder disease prior to the effective date of the policy. The jury rendered a verdict against the Defendant. Interestingly, however, the sole dissenting juror in the 11 to 1 verdict was a practicing nurse. This was one of the many insurance contract cases that I, and other members of the firm, handled as part of our regular caseload.

c. Name, address and telephone number of all counsel.

Mr. Jackson Speed
5108 Broadway, Suite 212
San Antonio, Texas 78209
(512) 828-6691
Attorney for Lee W. Ledbetter

Mr. Emilio M. Garza
Clemens, Spencer, Welmaker & Finck
1800 NBC Building
San Antonio, Texas 78205
(5120 227-7121
Attorney for Reserve Life Insurance Company

19. Legal Activities. Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

a. E-Ferol cases.

On April 12, 1984, the Food and Drug Administration announced the recall of E-Ferol aqueous solution, a Vitamin E preparation for intravenous use in premature infants, after its use was linked to the death of 12 premature babies. The product was first marketed in November, 1983 and was distributed nationwide without federal approval as a new drug. Reports received by the Center for Disease Control indicated unusual abnormalities in premature infants in neonatal intensive care units. Because infants, particularly prematures, are born with a "physiological deficiency" of Vitamin E, the additive use of Vitamin E was thought to be desirable. Reports in the literature at that time indicated that substantial doses of Vitamin E would reduce the severity of retrolental fibroplasia in neonatals, which are administered oxygen because of their low weight. E-Ferol was used at Children's Hospital, Santa Rosa Medical Center (SRMC), prior to said recall. Eleven (11) sets of parents filed lawsuits on behalf of their deceased children against the manufacturers and distributors of E-Ferol alleging wrongful death of premature infants who received multiple intravenous injections of E-Ferol aqueous solution while at SRMC. These suits were eventually settled for a reported Twenty-Five Million Dollars ($25,000,000). Although the depositions of various individuals of SRMC's pharmacy were taken in an attempt to bring SRMC into the lawsuits, SRMC was never sued. I was the primary attorney to handle this matter.

b. Pediatric Review Committee for Seriously Ill or Handicapped Children (SRMC).

From November 18, 1985 through April 3, 1987, I was a member of the Pediatric Review Committee for Seriously Ill or Handicapped Children (SRMC). This committee convened, upon the request of any member of the health care team, by the Medical Director or Administrator of Children's Hospital, to consider unresolved ethical, moral and religious issues involving care of seriously ill or handicapped pediatric patients. This committee provided education, developed and recommended institutional policies, and offered consultation to providers and families facing a range of ethical problems or questions about medical treatment of infants with regard to treatment, withdrawal of treatment and questions of nutrition.

c. United States of America v. Anselmo Hernandez-Molina, Cause No. SA-85-CR-329(27).

See No. 18 - Fourth Case, supra. This is reported to have been the longest criminal trial in the Western District of Texas.

d. Jon Anthony Gray, et al. v. H.E. Butt Grocery Company, et al., No. 86-CI-08920. 225th District Court, Bexar County, Texas; June 16, 1987 through July 3, 1987 before the Honorable Emilio M. Garza.

This complex strict liability/negligence case was filed by the parents of a mildly retarded six-year-old girl against Syntex Laboratories, Inc. alleging that a particular baby formula--NEO-MULL-SOY--failed to provide the needed amount of chloride for proper brain growth causing the "failure to thrive" of Jennifer Gray and consequently certain learning disabilities. This case involved complex evidentiary issues dealing with medical and research articles, a congressional inquiry and a 20/20 expose. This was first major medical malpractice case which I tried as a judge.

e. Santa Rosa Medical Center v. The Honorable Carolyn Spears, 709 S.W.2d 720 (Tex. App.--San Antonio 1986, no writ).

See No. 18 - First Case, supra. This mandamus action reaffirmed the confidentiality of peer review activities and the right of staff physicians to police themselves.

f. The incorporation of two charitable organizations as non-profit Texas corporations, and subsequent exemption from federal income taxes, one under IRC § 501(c)(3) and the other under § 501(c)(4). I later served as Board of Director of one of those organizations.

g. Sidermex International, Inc. v. Sears World Trade, Inc., Cause No. SA-85-CA-1323.

In 1985 through 1986, I represented Sidermex International, Inc., a wholly own subsidiary of Altos Hornos de Mexico, S.A., the steel company of the Republic of Mexico, in a suit against Sears World Trade, Inc. to collect a debt owning on 1932.810 metric tons of secondary steel which was delivered FAS Tampico, Mexico and which was destined to Gemlik, Turkey. Payment was to be made on a letter of credit to a Houston, Texas bank. After two years of discovery, Sears settled for 90% of the debt owed. This case was especially complicated since all negotiations were conducted through telegraphic messages usually in Spanish, and three main principals lived in foreign countries.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   None; the only possible conflicts of interest which could occur are with my old firm (Clemens, Spencer, Welmaker & Finck) and my former major client (Santa Rosa Medical Center). Although I have no financial interest with either, I would disqualify myself if any matters were presented for adjudication which were pending while I was still with the firm, or while I was representing Santa Rosa Medical Center.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

	1987	1988
Ms. JoAnn Mattera (Browne)		
Interest	58.67	0
Capital gain	275.98	0
Mr. Wayne Howard		
Interest	134.11	0
Capital gain	633.28	0
Mr. Roy W. Smith (note-interest)	685.00	0
Clemens, Spencer, Welmaker & Finck		
Salary	19,589.66	0
Interest	829.07	0
Capital gain	597.66	0

	1987	1988
State of Texas	37,959.31	9,354.82
County of Bexar, Texas	9,475.70	1,142.00
IRA Contract No. 3530157D (Conn. Mut.)	1,003.37	0
National Bank of Commerce Money Market 9.917.209	676.76	0

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	24,225	00*	
U.S. Government securities—add schedule			
Listed securities—add schedule			
Unlisted securities—add schedule			
Accounts and notes receivable:			
Due from relatives and friends	5,000	00	
Due from others (Roy W. Smith)	4,619	00	
Doubtful			
Real estate owned—add schedule	155,800 10,500	00** 00***	
Real estate mortgages receivable	10,000	00****	
Autos and other personal property	25,000	00	
Cash value—life insurance			
Other assets—itemize: IRA (No. 3530157D)	22,406	00	
Total assets	257,550	00	

LIABILITIES			
Notes payable to banks—secured			
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due			
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule			
Chattel mortgages and other liens payable			
Other debts—itemize: Loan from Estate of Antonio P. Garza, dec'd	1,000	00	
Total liabilities	1,000	00	
Net worth	256,550	00	
Total liabilities and net worth	257,550	00	

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor		0	
On leases or contracts		0	
Legal Claims		0	
Provision for Federal Income Tax		0	
Other special debt		0	

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.) No			
Are you defendant in any suits or legal actions? No			
Have you ever taken bankruptcy? No			

* NBC of SA Money Market Account No. 9.917.209
and Checking Account No. 1.595.385

** 6070 Roft Road, residence.

*** 5-acre parcel, Victorville, California

**** 1/3 interest in Lot 170, Blue Lake Estates in Llano County, Texas.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   Throughout my legal career, I have represented charitable and religious organizations in San Antonio to which I have contributed many hours of work on either a very reduced hourly charge or at no cost, such work totaling approximately 20-30 yearly. I have incorporated two non-profit corporations and obtained § 501(c)(3) or § 501(c)(4) exemptions plus state exempt status. Subsequently, I advised one corporation as Board of Director for 7 years (Cordi-Marian Sisters, Inc.). Further, I represented indigent defendants in federal court for each year I have been a member of the Bar for the Western District of Texas. In 1986, I represented an indigent defendant in a 3-month trial, which effectively ended my personal practice for that period of time.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

   No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   Yes. I was one of 24 individuals to apply for the vacated bench to the United States District Court for the Western District of Texas. Fifteen individuals were interviewed by a select committee of distinguished attorneys, composed of both Democrats and Republicans, who recommended four potential nominees to Senator Gramm after which I was recommended. Since then, I have been interviewed by four attorneys at the Department of Justice, the FBI, and the ABA.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

   No.

5. Please discuss your views on the following criticism involving "judicial activism."

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticsm that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

   Some of the characteristics of this "judicial activism" have been said to include:

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

   b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

   c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

   d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

   e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

   The court's responsibility most succinctly stated is "EQUAL JUSTICE UNDER LAW." The court must declare the sense of the law and apply it fairly and equally. The court must exercise its judgment, not its will; it must not substitute its pleasure for that of the legislative body or other branches and levels of government on the pretense of repugnancy.

   If the critics mean by the five stated characteristics of "judicial activism" that courts have exercised their will, and not their judgment "under law," then I agree that, in those instances, courts have usurped power. If, however, critics simply mean that they do not like the exercise of judgment by courts, given the proper application of law, then I would submit that these courts have not usurped power.

AFFIDAVIT

I, Emilio Miller Garza, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 4, 1988
(DATE)

Emilio Miller Garza
EMILIO MILLER GARZA

Cynthia S. Hyatt
(NOTARY)
Notary Public in and for
the State of Texas
Cynthia S. Hyatt
My Comm. Expires 3-30-91

AMERICAN BAR ASSOCIATION

Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS
LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

February 2, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: EMILIO M. GARZA
United States District Court
for the Western District of Texas

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Emilio M. Garza for appointment as Judge of the United States District Court for the Western District of Texas.

Our Committee is unanimously of the opinion that Judge Garza is "Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

THOMAS S. ZILLY

Birth:	January 1, 1935	Detroit, Michigan
Legal Residence:	Washington	
Marital Status:	Separated	Four children
Education:	1952 - 1956	University of Michigan B.A. degree
	1959 - 1962	Cornell University J.D. degree
Bar:	1962	Washington
Military Service:	1956 - 1959	United State Navy
Experience:	1962 - present	Lane Powell Moss & Miller Associate 1962-1967 Partner 1967-present
Office:	3800 Rainier Bank Tower Seattle, Washington 98101 206 223-7016	
Home:	7429 Latona N.E. Seattle, Washington 98115-5313	

To be United States District Judge for the Western District of Washington

UNITED STATES SENATE

QUESTIONNAIRE FOR JUDICIAL NOMINEE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Answer: Thomas Samuel Zilly

2. Address: List current place of residence and office address(es).

Answer:

Residence address:

7429 Latona N.E.
Seattle, WA 98115-5313
(206) 525-5318

Office address:

Lane Powell Moss & Miller
3800 Rainier Bank Tower
Seattle, WA 98101
(206) 223-7016.

3. Date and place of birth.

Answer:

January 1, 1935
Detroit, Michigan.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Answer:

Married; separated July 1, 1986. Petition for Dissolution filed in February, 1987 in King County Superior Court under File No. 87-3-01422-7. The Petition is now pending. My spouse is a graduate Librarian and is presently a full-time graduate student at Columbia University, New York, New York.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Answer:

University of Michigan, B.A. (1952-1956) (Degree awarded June, 1956);

Cornell University, Doctor of Law (1959-1962) (Degree awarded June 11, 1962).

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Answer:

(a) United States Navy -- 1956-1959

(b) Professor Harry Henn
Cornell Law School
Myron Taylor Hall
Ithaca, New York
Research assistant (1960-62)

(c) Pillsbury, Madison & Sutro
225 Bush Street
San Francisco, CA 94120
Summer Law Clerk - 1961

(d) United States Naval Reserve
U.S. Naval Reserve Station
Ithaca, NY
Active reserve officer (1959-62)

(e) Lane Powell Moss & Miller
3800 Rainier Bank Tower
Seattle, WA 98101
Associate (1962-1967);
Partner (1967 to Present).

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Answer:

Yes; active duty in the United States Naval Reserve (August 1956 to August 1959); Candidate at Naval Officers Candidate School, August 1956 until commissioned as Ensign in USNR in December 1956; Serial No. 612023; Service on active duty as Line Officer on board USS NOA (DD841) stationed in Norfolk, Virginia with duties as Sonar Officer, First Lieutenant and Gunnery Officer (January 1957 to August 1959). Active with a Naval Reserve Unit in Ithaca, New York (September 1959 to May 1962). Present status -- retired as Lieutenant USNR.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Answer:

Cornell Law Quarterly Board of Editors (Managing Editor) 1961-1962;

Cornell Law School First Place Frazer Prize awarded to the law student elected by the third-year class from recommendations of the faculty, on the basis of high qualities of mind and character;

Constitutional Law Award - Cornell Law School; and

President, Seattle-King County Bar Association (1986-87).

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Answer:

(a) American Bar Association (1962 to present)

Litigation Section (approximately 1975 to present);

Co-author -- Chapter 12, Legal Malpractice, Professional Responsibility, A Guide for Attorneys, ABA Professional Education Publication (1976);

Author -- Article: Recent Developments in Legal Malpractice Litigation: 6 Journal of the Section of Litigation, American Bar Association 8 (Fall 1979);

(b) Federal Bar Association, Western District of Washington (approximately 1984 to present)

(c) Washington State Bar Association (1962 to present)

Hearing Officer, Disciplinary Board (1983 to present);

Bar Examiner (1975 to 1985);

Member, Bar Exam Appeals (1984);

Chairperson, Bar Exam Appeals (1983);

Executive Committee, Bar Examiners (1978-80);

Chairperson, Committee on Third World Students, Bar Exams and Law Schools (1977);

Continuing Legal Education Lecturer - Corporate, Business and Banking Section (May 20, 1977);

(d) Seattle-King County Bar Association (1962 to present)

Chairperson, Nominations Committee - Present;

Member -- Minorities in Law Committee - 1987 to Present;

Member -- Court Congestion Committee - 1987 to Present;

President 1986-87;

First Vice President 1985-86;

Second Vice President 1984-85;

Chairperson, Management and Membership Committee 1984-85;

Trustee 1981-84;

Member -- Management and Membership Committee 1980-81;

Treasurer 1979-81;

Member -- Court Congestion Committee 1979-78;

Member -- Judiciary and Courts Committee 1971-72;

Chairperson, Program Committee 1969-70;

Chairperson, Young Lawyers Section 1966;

Board of Trustees, Young Lawyers Section 1963-66.

(e) Other

Member -- American Judicature Society (approximately 1975 to present);

Member -- National Conference of Bar Presidents (1986 to present).

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Answer:

Member -- St. Patrick Catholic Church, Seattle, Washington;

Member -- American Bar Association, Washington State Bar Association and Seattle-King County Bar Association;

Member -- American Judicature Society;

Member -- College Club of Seattle;

Member -- Washington Athletic Club.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Answer:

All Washington State Courts - Admitted: September 18, 1962;

United States District Court for the Western District of Washington - Admitted: November 19, 1962;

United States District Court for the Eastern District of Washington - Admitted: April 29, 1965;

United States Court of Appeals for the Ninth Circuit - Admitted: May 3, 1963;

United States Supreme Court - Admitted: November 1, 1976;

United States Tax Court - Admitted: March 3, 1976;

Special admission in connection with specific matters in the Federal Courts in Idaho and Alaska and in the Alaska State Courts.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Answer:

a. Note: Eminent Domain: Fee Simple Determinable and Possibility of Reverter: Distribution of Award: 46 Cornell Law Quarterly 631 (1961);

b. Note: Damages: Special Damage in Defamation and Injurious Falsehood: Requirement of Allegation and Proof. 47 Cornell Law Quarterly 92 (1961);

c. Note: Torts: Landowner's Common Law and Statutory Liability to Firemen for Negligent Maintenance of Premises: 47 Cornell Law Quarterly 119 (1961); Reprinted by Frumer & Friedman in Personal Injury Annual 1962 at page 523;

d. Article: Recent Developments in Legal Malpractice Litigation: 6 Journal of the Section of Litigation, American Bar Association 8 (Fall 1979);

e. The President's Columns, Seattle-King County Bar Bulletin (1986-87).

f. Co-author -- Chapter 12, Legal Malpractice, Professional Responsibility, A Guide for Attorneys, ABA Professional Education Publication (1976);

g. Author -- Article: Recent Developments in Legal Malpractice, Washington State Bar News, June 1977; and

h. Washington State Bar Association Committee Report on Third World Students, Bar Exams and Law Schools (1977).

13. Health: What is the present state of your health? List the date of your last physical examination.

Answer:

Excellent health. Last physical examination was August 6, 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Answer: None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Answer: Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Answer: None / not applicable.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Answer: No.

2. whether you practiced alone, and if so, the addresses and dates;

Answer: No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Answer:

Lane Powell Moss & Miller
3800 Rainier Bank Tower
Seattle, WA 98101

Associate (1962-1967);
Partner (1967 to present).

b. 1. What has been the general character of your law practice, dividing it into period with dates if its character has changed over the years?

Answer:

My practice has focused primarily on complex commercial and business litigation in federal and state courts. Areas of concentration include securities, commercial law, real property, condemnation, professional malpractice litigation, bankruptcy and creditors' rights.

I was a member of our firm's Executive Committee for six years. I was Chair of the firm's Hiring Committee for approximately five years. I am presently Chairperson of one of our Commercial Litigation Departments consisting of approximately 10 attorneys (1982 to present).

1962-1972: During the first 10 years of practice, my firm was approximately 16-25 lawyers. As a result, I had a broad general corporate and litigation practice. This work included general business work for corporations, partnerships and joint ventures; tax research; estate planning; general real estate matters and creditors' rights problems, involving loan package review for lenders and foreclosure work. My general litigation practice included mortgage foreclosures, contract litigation, consumer protection claims, real estate matters and malpractice defense of professionals such as insurance agents, real estate brokers, architects, engineers, accountants and attorneys. I also handled numerous condemnation and inverse condemnation actions.

1973 to Present. During the last 15 years, my litigation practice has expanded into more substantial complex business-related litigation on a regular basis. Although a substantial portion of the litigation has involved defense work, I have also represented individuals and companies as plaintiffs in various contested matters.

My practice continues to involve the defense of professional liability claims with particular emphasis on legal malpractice. I also defend numerous claims under the federal and state securities acts, the Washington Consumer Protection Act and I have had substantial litigation relating to the taxation of timberlands in the state of Washington. In addition, I represent several business clients and I regularly advise them on general legal matters and handle their litigation. I also have had a substantial practice in bankruptcy court.

b. 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Answer:

Because of the wide variety of clients, I do not believe that any of them could fairly be described as typical. My clients have included Texaco Inc., Crown Zellerbach Corporation, Simpson Timber Company, Weyerhaeuser Company, Boise Cascade Corporation, Georgia-Pacific Corporation, numerous other forest products companies, USLIFE Credit Life Insurance (and other credit life insurance companies), the City of Bellingham, Wedbush, Noble, Cooke, Inc. (a regional securities broker/dealer), AT&T Communications, Inc., Western Farmers Association (a former major regional agricultural cooperative); and a variety of individuals, partnerships and corporations involved in litigation. I have also represented many lawyers and law firms. I have also represented individuals on a pro bono basis. My areas of specialization include condemnation, securities, contract, tort, professional liability (primarily attorney legal malpractice claims), business and commercial litigation and state timber tax law.

c. 1. Did you appear in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, giving dates.

Answer:

During the past five years I have appeared in federal and state courts on a regular basis for both pretrial motion practice and trial.

2. What percentage of these appearances was in:

(a) federal courts;
(b) state courts of record;
(c) other courts.

Answer:

(a) Federal courts - 20%
(b) State courts of record - 80%
(c) Other courts - 0%.

3. What percentage of your litigation was:

   (a) civil;
   (b) criminal.

   Answer:

   (a) Civil - 100%
   (b) Criminal - 0%.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Answer:

During the past five years I have tried 10 cases in courts of record to verdict or judgment either as sole counsel or chief counsel. During the previous five years I estimate I tried an additional 20 cases to verdict or judgment.

5. What percentage of these trials was:

   (a) jury;
   (b) non-jury.

   Answer:

   (a) Jury - 20%
   (b) Non-jury - 80%.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   (a) the date of representation;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Answer:

1. Arden Tree Farms, Inc., et al. v. King County and Department of Revenue, State of Washington, Thurston County Superior Court No. 56251. I represented Arden Tree Farms, Inc. and other petitioners in an action against the State of Washington challenging the value of bare forest land as set by the Department of Revenue for tax purposes as of January 1, 1977. Washington law required the Department of Revenue (DOR) to establish annually the value of bare forest land for ad valorem taxes imposed by each county. My clients argued that the DOR established values were improper. King County (the State's largest county) intervened in opposition to the position of my clients. After a seven week non-jury trial, Judge Alexander ruled in favor of my clients. The decision was significant because it set aside all real property taxes for bare forest land for the year in question. Related litigation sought appropriate tax refunds for that year and the following year. See, for example, King County v. Department of Revenue, No. 4885-0-II decided July 26, 1982 reported in 32 Wn.App. 617, 649 P.2d 126 (1982). (Summary Judgment in favor of clients for 1978 valuation of bare forest land affirmed). I actively participated in this litigation. As a result of this litigation, the Legislature rather than the DOR now determines the value of bare forest land in Washington.

   (a) February 9, 1978-March 17, 1978 (27 trial days);

   (b) Judge Gerry L. Alexander
   Thurston County Superior Court
   Olympia, Washington;
   Presently member of Washington Court of Appeals, Division II
   945 Market Street, Suite 600
   Tacoma, WA 98402
   (206) 593-2976

   (c) Gregory Montgomery, former Assistant Attorney General, Department of Revenue
   Presently Assistant King County Prosecuting Attorney
   E550 King County Courthouse
   Seattle, WA 98104
   (206) 583-4437

Robert D. Johns
(former Assistant Prosecuting Attorney for King County)
3600 Columbia Center
Seattle, WA 98104
(206) 292-4900.

2. USLIFE Credit Life Insurance Company, a corporation, USLIFE Life Insurance Company of California, a corporation, and Pacific Standard Life Insurance Company, a corporation, Plaintiffs, v. Gerald D. McAfee and Susan E. McAfee, his wife, Defendants, Snohomish County Cause No. 128467, 29 Wn. App. 574, 630 P.2d 450 (1981); Petition for review denied, 97 Wn.2d 1004 (1982). I represented each of the above-named plaintiff companies in an action for rescission of various policies of credit life issued in the name of Gerald D. McAfee and Susan E. McAfee, his wife. The case was consolidated with similar claims by Unigard Olympic Life Insurance Company (Snohomish County No. 128962), Bank of Everett (Snohomish County No. 131144), Richard Marquardt as Receiver for Rainier National Life Insurance Company (Snohomish County No. 143493) and Commercial Bankers Life Insurance Company (Snohomish County No. 133234) against the same defendants. Each company had issued credit life policies to the defendants at a time when Susan E. McAfee was known by the defendants to have inoperable and terminal cancer. This case posed an important issue of first impression in Washington. The issue was whether a person who knows he or she is dying of cancer has an affirmative duty of disclosure to an insurance company when no medical questions are asked in connection with obtaining credit life insurance. This bench trial resulted in judgment for all the plaintiffs. I was the principal attorney for my clients. The case was later reversed by the Court of Appeals which held that absent an insurer's request for health information, there is no duty to volunteer it. I prepared the appellate briefs and argued the case in the Court of Appeals, Division I. Plaintiffs' motion for discretionary review with the Washington Supreme Court was denied. The Consumer Credit Life Association, through its attorney, Daniel E. Tolfree (1400 Washington Building, Seattle, WA 98101, (206) 628-6600), filed a motion for permission to file an amicus curiae brief on the issues presented in the Supreme Court.

(a) April 17, 1978-May 3, 1978 (10 trial days).

(b) Judge Thomas G. McCrea
Snohomish County Superior Court
Everett, Washington
(206) 259-9543

(c) George W. Schoonmaker
300 Park Place Building
Sixth & University
Seattle, WA 98101
(206) 343-5655
Attorney for Defendants

Thomas Loftus
1215 Fourth Avenue
Seattle, WA 98161
(206) 622-4488
Attorney for Unigard Olympic Life Insurance Company

Richard D. Eadie
3701 - 1001 Fourth Avenue Plaza
Seattle, WA 98154
(206) 622-3720
Attorney for Richard Marquardt, Washington State Insurance Commissioner, as Receiver for Rainier National Life Insurance Company

Marco DeFunis
3010 First Avenue
Seattle, WA 98121
(206) 624-1290
Attorney for Commercial Bankers Life Insurance Company

3. *Globe Development Company, a Washington limited partnership, v. Wedbush, Noble, Cooke, Inc., United States District Court, Western District of Washington* No. C80-1153V. Plaintiff sued our client, Wedbush, Noble, Cooke, Inc., a regional stock brokerage firm and a former Wedbush employee, Richard Baldwin, for violations of Section 12(2) of the Securities Act of 1933, 15 USC § 77(1), Section 10(b) of the Securities and Exchange Act of 1934, 15 USC § 78(j), (o) and Rule 10(b)-16, 17 CFR § 240.10b-16, Consumer Protection Act claims, common law fraud and negligence. The action arose because Wedbush sold Equitable Savings & Loan stock to the plaintiff on margin; there was a subsequent margin call and resulting damages in excess of $190,000. The case

presented complex securities issues, i.e., application of Rule 10b-16 (relating to written disclosure to margin customers as to the terms and conditions under which additional collateral would be required or interest charged on margin accounts). I was the principal trial attorney for Wedbush, Noble, Cooke, Inc. (assisted by an associate, Nancy McCready Higgins (206) 655-2321). The jury returned a verdict in favor of the plaintiff for $69,000. The case was settled before appeal.

(a) February 7, 1983-February 15, 1983 (7 trial days);

(b) The Honorable Donald S. Voorhees
United States District Judge
United States Court House
Seattle, WA 98101
(206) 442-1800

(c) John T. O'Shea
4th Floor
7900 S.E. 28th
Mercer Island, WA 98040
(206) 236-0432
Attorney for Plaintiff;

Ray M. Dunlap
232 Market Street
Kirkland, WA 98033
(206) 827-9311
Attorney for Defendant Baldwin.

4. Mark F. Andrews, Jr., et al. v. Ralph Munro, as Secretary of State, et al., Washington Supreme Court No. 50398-2, 102 Wn.2d 761, 689 P.2d 399 (1984). This original action filed in the Washington Supreme Court sought a Writ of Prohibition against a state officer from processing or certifying a referendum. I represented petitioners Mark F. Andrews, Jr. and John A. Nelson who owned forest land and timber in Washington. The named respondents were Ralph Munro, as Secretary of State of the State of Washington; Eleanor Fortson; and the Committee to Maintain a Fair Timber Tax. Referendum 41 proposed the repeal of portions of Senate Bill No. 4421, Laws of 1984, Ch. 204 which amended RCW 84.33 and reduced the excise tax on the harvest of timber in Washington. This case involved issues of state constitutional law governing the referendum process. The matter was heard by the Supreme Court en banc on May 21, 1984. I argued the case for petitioners. The Court granted petitioners'

writ, holding that the proposed referendum was unconstitutional pursuant to Article II, Section 1(b) of the Washington Constitution.

(a) May 21, 1984

(b) Washington State Supreme Court
Olympia, Washington

(c) Kenneth O. Eikenberry
Attorney General
and
Edward B. Mackie
Chief Deputy Attorney General
415 General Administration Building
Olympia, WA 98504
(206) 753-6200
Attorneys for Respondent Ralph Munro, Secretary of State, State of Washington

David T. McDonald
3500 First Interstate Center
Seattle, WA 98104
(206) 223-4600
Attorney for Eleanor Fortson and Committee to Maintain a Fair Timber Tax

5. Robert H. Keller, Jr. v. City of Bellingham, et al., Whatcom County Cause No. 49750, 20 Wn. App. 1, 578 P.2d 881 (1978); 92 Wn.2d 726, 600 P.2d 1276 (1979). Petitioners sought a declaratory judgment against the City of Bellingham that certain improvements made by Georgia-Pacific Corporation were in violation of the City's zoning ordinance. I represented Georgia-Pacific Corporation as an intervenor-respondent. The case was significant because it presented an important zoning issue of whether an intensification of a non-conforming use was prohibited as an "enlargement" under the applicable zoning code. The case also presented the issue of whether the natural expansion of a non-conforming use is a constitutionally protected right when the change is not detrimental to the public health, welfare and safety of the community. There was no Washington decision directly in point on these issues. I was the attorney for Georgia-Pacific throughout the case including the subsequent briefing and arguments in the Court of Appeals and the Washington Supreme Court. Georgia-Pacific prevailed at each level of the proceedings.

(a) July 19, 1976-July 21, 1976 (3 trial days);

(b) Judge Jack S. Kurtz
Whatcom County Superior Court
Bellingham, Washington
(206) 676-6777

(c) Larry Daugert
300 N. Commercial
Bellingham, Washington
(206) 733-0212
Attorney for Petitioners

Patrick L. Brock
Formerly Bellingham City Attorney
Present address:
104 S. Pacific
Kelso, WA 98626
(206) 423-2600
Attorney for City of Bellingham

6. In the Matter of the Petition of the City of Bellingham to Acquire Certain Property Rights by Ordinance No. 8873, Whatcom County Cause No. 80-2-00898-2. The City of Bellingham brought several related condemnation actions to acquire frontage along a major arterial in Bellingham. The proceedings were filed in Whatcom County Superior Court and two parcels ultimately proceeded to a jury trial.

The first parcel to be tried, Parcel No. 4, raised issues of just compensation and claims for damages for future increased traffic and resulting noise. The case raised the legal issue of whether a property owner is entitled to damages for noise damage suffered in common with similarly situated properties or whether the damage must be peculiar to the specific property at issue. There was no controlling precedent in Washington at the time of this condemnation action. I was the principal trial attorney handling the trial of Parcel No. 4, assisted at trial by co-counsel Newell Smith. I was the sole trial counsel for the City of Bellingham in connection with the later trial of Parcel No. 1. Both were jury trials and resulted in favorable results for the City of Bellingham. I also handled the contested "public use" hearing, settlement of other parcels and the related action, Terrace Condominium Association, et al. v. The City of Bellingham, Whatcom County Cause No.

80-2-00768-4. The Terrace Condominium plaintiffs sought to enjoin the condemnation action, alleging that the ordinance had been improperly adopted by the City and that the conduct of the City officials violated the appearance of fairness doctrine.

(a) January 12, 1981-January 22, 1981 (7 trial days) (Parcel No. 4); May 13, 1981-May 20, 1981 (5 trial days) (Parcel No. 1).

(b) Judge Jack S. Kurtz
Whatcom County Superior Court
Bellingham, Washington

(c) Parcel No. 4
Thomas S. Zilly
Newell Smith (co-counsel)
2817-B Wetmore
Everett, WA 98201
(206) 252-3149
Attorneys for City of Bellingham

John S. Ludwigson
P.O. Box 399
Bellingham, WA 98225
(206) 734-2000
Attorneys for Seventh-Day Adventist Church

Parcel No. 1
Thomas S. Zilly
Attorney for City of Bellingham

Samuel W. Peach
Bellingham National Bank Building
Bellingham, WA 98225
(206) 734-2030
Attorney for Leona Smith and Smith Cleaners & Laundry, Inc.

Charles R. Olson
John T. Slater
Bellingham National Bank Building
Bellingham, Washington
(206) 734-2530
Attorneys for Bellingham National Bank

Orchard Terrace Litigation
R. F. Atwood
Suite 5, Bellingham Legal Center
Bellingham, Washington
(206) 733-3370
Attorneys for Orchard Terrace
Condominium Association

7. Gayle M. Hogg v. Kane, Vandeberg, Hartinger & Walker, et al., Pierce County No. 84-2-00888-7. This action against a Tacoma law firm and one of its associates arose from the handling of a dissolution action and a subsequent probate proceeding. The case involved issues of whether the attorney for defendants properly informed the plaintiff about a proposed settlement and whether the ultimate settlement was reasonable and binding on plaintiff. Plaintiffs claimed negligence, breach of fiduciary duty and breach of the Washington Consumer Protection Act. We represented the defendants and I was the principal attorney responsible for the preparation and trial of the case. Mr. Randall Beighle, an associate, assisted me. The trial in Pierce County Superior Court resulted in a jury verdict of liability against the defendants. The case was later settled before the damage portion of the case could be tried.

(a) October 13, 1986-October 31, 1986 (15 trial days);

(b) Judge Susan Agid
King County Superior Court
(Acting as visiting judge in
Pierce County)
Seattle, Washington

(c) Roger M. Leed
1411 Fourth Avenue (Suite 520)
Seattle, Washington
(206) 382-0217
Attorney for Plaintiff

Thomas S. Zilly
Randall P. Beighle
Attorneys for Defendants.

8. Arthur Granberg, et ux v. Richard Baldwin, et ux., et al., King County Cause No. 81-2-11478-4. This action arose out of the misappropriation of customer funds by Richard Baldwin while he was employed as a security salesman for our client, Wedbush, Noble, Cooke, Inc.

("Wedbush"), a securities broker-dealer. Plaintiff alleged that Wedbush was liable for negligence in hiring Baldwin, failing to properly supervise Baldwin and was vicariously liable for Baldwin's acts under the Washington Securities Act, RCW 21.20.430(3) and common law theories. The claims arose from Baldwin's unlawful appropriation of money from various Wedbush customers without the knowledge of Wedbush. Prior to trial, Baldwin had been convicted of a felony in King County and had served jail time. The case was significant because it was one of many similar claims (Hanks v. Baldwin, King County Cause No. 81-2-12319-8, Woolard v. Baldwin, King County Cause No. 81-2-10763-0 and Wilski v. Baldwin, U.S.D.C. W.D. WA No. 81-144C) which raised the important issue of the obligation of an employer in the securities field for the criminal acts of its employees. I was the principal trial lawyer for Wedbush and was assisted by my associate, Nancy McCready Higgins. The case was tried to the court and resulted in judgment in favor of our client. Plaintiffs appealed and the case was later settled by defendant's waiver of statutory costs.

(a) August 5, 1982-August 11, 1982 (5 trial days);

(b) Judge Lloyd Bever
King County Superior Court
Seattle, Washington

(c) Thomas S. Zilly
Nancy McCready Higgins
Attorneys for Wedbush

A. Peter Parsons
Christopher Carletti
4800 SeaFirst Fifth Avenue Plaza
Seattle, WA 98104-3181
(206) 623-9100
Attorneys for Plaintiffs

Richard Baldwin, Pro Se

9. Russell T. Vint, Jr., et al. v. W. O. Byrd, et ux., et al., Snohomish County Cause No. 122862. I represented the plaintiffs in an action against a real estate broker arising out of the purchase of a triplex. The action was based on fraud, misrepresentation, breach of fiduciary duty and the Washington Consumer Protection Act. The case raised an undecided issue of whether a real estate

broker could be liable under the Washington Consumer Protection Act, RCW 19.86.020. I handled all aspects of the discovery and trial of the case before a jury. The jury found for the plaintiffs and awarded damages equal to the prayer of the complaint. The court later awarded reasonable attorneys' fees and costs in favor of the plaintiffs.

(a) December 9, 1974-December 17, 1974 (7 trial days);

(b) Judge Thomas G. McCrea
Snohomish County Superior Court
Everett, WA 98201
(206) 259-9543

(c) Terrence H. Neal
5803 - 332nd S.W.
Mountlake Terrace, WA 98043
(206) 774-6677
Attorney for Defendants

10. In re Western Farmers Association, United States Bankruptcy Court, Western District of Washington at Seattle, No. 79-02143. I was the principal attorney for the debtor in a Chapter 11 proceeding to reorganize Western Farmers Association, in Bankruptcy Court. Western Farmers was a northwest regional agricultural cooperative with over 1200 employees, assets of over $60,000,000 and liabilities of over $80,000,000. When filed in 1979 it was believed to be the largest bankruptcy reorganization filed in the country under the then-recent Bankruptcy Reform Act of 1978 (11 USC § 101-1330). The case involved approximately 16,000 creditors. I was the principal draftsman of a complex Plan of Reorganization which was ultimately confirmed by the Bankruptcy Court in April, 1982. I handled the contested disclosure and confirmation hearings before the Bankruptcy Court. Under the confirmed Plan of Reorganization, substantially all of the assets of the company were sold and all secured and general unsecured creditors were paid in full. In addition, subordinated finance fund certificate holders were paid in excess of $8,000,000 or about 50% of the principal amount of their claims.

This bankruptcy proceeding involved numerous other contested hearings relating to the borrowing of operating capital, the sale of assets and the objections to claims. I handled or supervised much of the related litigation arising out of the proceeding. As an example, we objected to a claim of the Western Conference of Teamsters Pension Trust Fund which alleged that the debtor owed approximately $1,050,000 as a withdrawal liability under the Multi-Employer Pension Plan Amendments Act of 1980, 29 USC § 1381. This matter was presented for summary judgment before the court and ultimately settled favorably to the debtor.

(a) February 16, 1982; February 18, 1982; April 1, 1982

(b) The Honorable Samuel J. Steiner
United States Bankruptcy Judge
220 United States Courthouse
Seattle, WA 98101
(206) 442-1626

(c) Thomas S. Zilly
Charles R. Ekberg of Lane Powell Moss & Miller
Douglas J. Shaeffer of Lane Powell Moss & Miller
Bernard Shapiro (co-counsel)
Sixth Floor
1801 Century Park East
Los Angeles, CA 90067
(213) 277-5400
Attorneys for Debtor

Willard Hatch
2700 Columbia SeaFirst Center
Seattle, WA 98104
(206) 622-0090
Attorney for General Unsecured Creditors Committee

Bennett A. McConaughy
4100 SeaFirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 622-1818
Attorney for the Finance Fund Certificate Holders Creditors Committee

George E. Frasier
4400 Seattle-First National Bank Building
Seattle, WA 98154
(206) 624-3600

Patrick A. Murphy (co-counsel)
101 California Street, 39th Floor
San Francisco, CA 94111
(415) 398-4700
Attorneys for Spokane Bank for Cooperatives

Edward B. Mackie
Kathleen Spong
State of Washington
Temple of Justice
Olympia, WA 98504
(206) 753-9673
Attorneys for State of Washington

N. Michael Hansen
3040 Federal Building
Seattle, WA 98174
(206) 442-7990
Attorneys for Securities & Exchange Commission

Note: Many other attorneys represented other creditors in this proceeding.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Answer:

There have been a great many cases which I have handled which were settled prior to trial. The following matters are illustrative of these cases:

1. Crown Zellerbach Corporation v. State of Washington, Thurston County Cause No. 84-2-000382-8. I represented Crown Zellerbach in an action to rescind and otherwise set aside 26 timber sales contracts with the State of Washington, Department of Natural Resources ("DNR"). These contracts were entered into as a result of competitive bidding at a time when timber prices were at unprecedented high levels. After the contracts were bid, the forest products industry was subject to a severe economic recession (during the period 1981-1983) which was unforeseen by the parties when the timber sale contracts were executed. As a result, stumpage prices dropped from the 1979 inflation peak of $365/thousand board feet on a Washington state-wide average basis to an approximate market value of $135/thousand board feet in 1983. Crown Zellerbach estimated losses of $16,600,000 if required to perform under its contracts with the State.

We brought this action to set aside the DNR contracts on the basis of commercial impracticability, frustration of purpose, impossibility and mistake. We also sought injunctive relief. The State of Washington counterclaimed and joined our client's surety, The St. Paul Fire & Marine Insurance Company, in seeking enforcement of the DNR contracts and alleging damage of over $14,085,000. I represented both Crown Zellerbach and its surety in lengthy negotiations directly with Brian Boyle, Commissioner of Public Lands, Olympia, Washington, and the State's attorneys, Michael Madden and Kathleen M. Boyle, Assistant Attorney Generals, 310 Public Lands Building, Olympia, WA 98504, (206) 753-5318. Extensive briefs and exhibits were presented to the DNR in support of our client's position which ultimately resulted in a very favorable settlement for our client in the fall of 1985 (Crown Zellerbach had to pay the State $1,200,000 and to return the uncut State timber on the defaulted sales in lieu of all other damages.) Our client was one of about 71 companies that had defaulted on DNR contracts. This was the second case to be settled. I handled the preparation of briefs and argument for a preliminary injunction, and a subsequent appeal to the Washington Supreme Court, as well as being the principal negotiator for our client in the extended negotiations.

2. NESCO Properties, Inc. v. Graham Stimson Center Limited Partnership, et al., King County Cause No. 86-2-02066-7. I represented NESCO Properties, Inc. ("NESCO") as plaintiff in an action against a prominent Seattle architect, John Graham, and his related companies (represented by Ronald McKinstry and Elaine Spencer of the Bogle & Gates firm, 2200 The Bank of California Center, Seattle, WA 98164, (206) 682-5151) for breach of contract and professional malpractice arising out of the parties Joint Venture Agreement to develop and build a 47-story retail and office high rise building in downtown Seattle. The defendants counterclaimed against our clients for in excess of $18,000,000 for alleged breach of fiduciary and contractual duties to defendants and they also joined the law firm of Graham & Dunn, the joint venture attorneys, as third-party defendants (represented by Malcolm Edwards of Edwards & Barbieri, 6501 Columbia Center, Seattle, WA 98104, (206) 624-0974). The case was preassigned to Judge Gary Little as a King County Civil Track I case (used in King County for complex cases) and was scheduled for a trial (estimated to take eight to ten weeks) to commence October 28, 1987. The issues in the

case involved interpretation of a Joint Venture Agreement as well as plaintiffs' claims of mismanagement and architectural malpractice by defendants. Discovery involved review and production of over 300,000 documents, 59 depositions, 839 deposition exhibits and numerous contested hearings before Judge Little. The parties agreed to a voluntary mediation of the case with Seattle attorney (now United States Federal District Judge) William Dwyer over several months (involving about 25 hours of hearings). The settlement yielded payment of about $1,200,000 to our client and dismissal with prejudice of all counterclaims against our client. The settlement was concluded in October, 1987. I was the lead attorney for the plaintiff, was the principal mediating attorney and spokesman for the client and supervised two other firm attorneys who actively participated in the case.

3. *Hospital Central Services Association v. United States of America*, United States District Court, Western District of Washington, 40 A.F.T.R. 2d 77-5646; 77-2 USTC § 9601 (1977); 623 F.2d 611 (9th Cir. 1980); Petition for Cert. denied 450 U.S. 911, 67 L.Ed.2d 334 (1981). Our client, Hospital Central Services Association ("HCSA") brought an action against the United States of America for a refund of 1974 federal income taxes. HCSA, a cooperative laundry owned by a group of nonprofit hospitals, claimed it was a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code and therefore exempt from taxation under Section 501(a) of the Code. Judge Walter McGovern of the District Court for the Western District of Washington granted judgment in favor of HCSA holding our client was a charitable organization within the meaning of Section 501(c)(3). The Ninth Circuit reversed by a *per curiam* decision holding that under Section 501(c)(3) of the Code, hospitals may only create tax-exempt entities to perform services listed in Section 501(e)(1)(A) of the Code. The Ninth Circuit decision relied upon the recently decided Third Circuit decision in *HCSC-Laundry v. The United States of America*, 624 F.2d 428 (3d Cir. 1980), *affirmed* 450 U.S. 1, 67 L.Ed.2d 21 (1981). The Third Circuit decision was contrary to the United States Court of Claims in *Northern Cal. Cent. Services, Inc. v. United States*, 591 F.2d 620 (Ct.Cl. 1979) and numerous other District Court decisions. The United States Supreme Court ultimately decided in the Third Circuit case that a nonprofit laundry was not exempt from taxation and therefore denied certiorari in our case. I handled all

aspects of the case in the District Court, I supervised the preparation of the brief and argument in the Court of Appeals (our former associate, Julie Brooks, (206) 246-5406 actually argued the case) and I prepared the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

4. Riley Kelly, Inc., et al. v. Texaco Inc., et al., United States District Court for the Eastern District of Washington, No. C-82-357 JLQ. This case involved multiple claims by plaintiff, a gasoline distributor in Yakima, Washington, against our client Texaco Inc. arising out of a termination by Texaco of this distributorship. I represented Texaco and it counterclaimed against Riley Kelly for damages and joined as third-party defendants officers of Riley Kelly and guarantors of the Riley Kelly Agreements. Plaintiffs claimed violations of the Washington Franchise Investment Protection Act, the Washington Consumer Protection, and unlawful changes in credit terms in violation of the Emergency Petroleum Allocation Act, 10 CFR § 210.62 and the Normal Business Practice Rule. Plaintiff further alleged that Texaco wrongfully changed plaintiffs' hauling allowance in violation of the Emergency Petroleum Allocation Act, 10 CFR § 210.62 and it was done to obtain a higher price than was permitted by statute. Texaco counterclaimed for $402,392.56 for unpaid product delivered during the five-month period prior to the distributor's termination. Texaco was successful in dismissing several of plaintiff's claims as a result of motions to dismiss and the case proceeded with regard to the two claims of alleged wrongful petroleum product price control under the federal statutes and regulations. After extensive negotiations and court hearings the matter was settled immediately prior to trial resulting in dismissal of all the plaintiff's claims and Texaco's counterclaims and third-party claims, final termination of the Riley Kelly distributorship and the conveyance by plaintiff to Texaco of a Toppenish truck stop and related real and personal property. The case involved numerous contested hearings before Judge Justin L. Quackenbush ((509) 456-3814) and a contested hearing before Judge Robert J. McNichols ((509) 456-6830). I was the principal attorney for Texaco in all aspects of this case. Mr. Lawrence J. Booher, Jr., a Texaco in-house attorney acted as co-counsel in this case for the company. The plaintiff and third-party defendants were represented by Douglas D. Peters, 115 South Second Avenue, Selah, WA 98942, (509) 697-7201.

5. Hong S. Tan, et ux., et al. v. Mueller Development Company, et al., King County Cause No. 85-2-20528-6. Hong Tan was a 20% owner of Mueller Development Company, formed by Tan and Henry Mueller (80% owner) to purchase land and develop residential apartment projects in Washington state. A dispute arose between the parties and Tan withdrew from the corporation, and then Tan demanded that Mueller purchase his stock pursuant to the terms of a Stock Purchase Agreement. When Mueller refused, we commenced this action in King County Superior Court for the value of the stock, for unpaid wages, for the reasonable value of work performed in Arizona, and for damages for mismanagement, slander and outrageous conduct. Plaintiffs Tan sought total damages of $1,720,178. Defendants counterclaimed seeking recovery of unpaid commissions, various advances and damages for mismanagement. The case was assigned to King County Superior Court Judge Gerrard M. Shellan (206) 583-4574, as a complex Track I case and given a March, 1987 trial date. The case was settled on the first day of trial by payment in cash of $375,000 to plaintiffs and a dismissal of all other claims. Defendants were represented by Edward M. Bensussen, 13th Floor, Tower Building, Seattle, WA 98101, (206) 624-5622.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Answer:

Upon withdrawal from the law firm of Lane Powell Moss & Miller, I will immediately receive my capital account in cash of $73,225.86 which amount can be reduced as a result of unpaid client costs or other factors. Thereafter, pursuant to the Partnership Agreement, as amended, I will receive a total of $408,947, without interest, payable in sixty (60) equal monthly installments commencing upon my withdrawal from the firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Answer:

I will determine at the outset of each case whether a conflict exists or whether there is an appearance of a conflict. Should any arise, I will eliminate the conflict or recuse myself from the case. I do not believe there are any categories of litigation or financial arrangements that are likely to present potential conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   Answer: No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   Answer:

Source	Amount	Year	
Lane Powell Moss & Miller	$235,652.00	1987	(actual)
Interest income:			
First Interstate Bank	$ 1,005.10	1987	(actual)
University Federal Savings	$ 619.57	1987	(actual)
Partnership share of sale of Anchorage house			
Capital gain	$ 621.08	1987	(actual)
Interest income	$ 135.16	1987	(actual)
Partnership interest in Lane Powell Moss & Miller	$ 4,380.80	January 1988	(actual)

In addition to the above, I have a Keogh Plan which increased in value during 1987 in approximate amount of $52,341 as a result of interest, dividends and the purchase and sale of securities and bonds during 1987.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

Answer:

See Net Worth Statement attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Answer:

Yes. Member Slade Gorton Campaign Steering Committee for Washington State Attorney General 1968; participated in review of recount of ballots in King County in Fall 1968.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Answer:

I have represented several persons on a pro bono basis as a lawyer. One matter involved preparation and actual trial in King County Superior Court for approximately two weeks of a wrongful death claim arising out of an automobile accident. I represented another person in attempts to pursue a medical malpractice claim in another state. I prepared several affidavits, caused a complaint to be filed in another state and advanced substantial costs which were not reimbursed. In the past three years I have spent in excess of 25 hours on pro bono matters handled by me. I am presently a member of the pro bono panel of the Seattle-King County Bar Association.

I have also actively promoted, encouraged and supervised my law firm in an active program associated with Evergreen Legal Services to provide legal service to the poor. During the calendar year 1986 my firm opened over 151 new files, incurred over 3500 hours of pro bono time and expended over $14,000 in non-recovered costs for pro bono clients. During calendar year 1987 my firm's activity remained substantially the same and there are presently approximately 290 open pro bono files being handled by this firm.

I have also been active in Bar Association activities for many years assisting in the extension of bar-related services to the poor on a pro bono basis. As President of the Seattle-King County Bar Association during the period July 1, 1986 through June 30, 1987, my primary goal was to double the number of lawyers in King County who participated on the pro bono panel of the bar association and significantly increase law firm participation in these programs. I estimate that I spent approximately 100 hours on bar association work related directly to work on pro bono projects during my year as President.

As a result of my efforts with the help of many other lawyers in King County, the lawyer panel was doubled and several other large law firms agreed to handle pro bono cases through the bar association program. In addition, I have been an active participant as an officer and trustee of the bar association in soliciting lawyers to donate their time to provide legal services to the poor.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either former membership requirements or the practical implementation of membership policies? If so, list, with dates of membership, what you have done to try to change these policies.

Answer:

I have never been a member of any such organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts. If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Answer:

Yes; the Washington State Bar Association appointed a special selection committee to interview applicants for this position. Approximately 25 to 30 persons were interviewed and my name together with approximately 12 other names (the names or exact number were not made public) were sent to Senator Daniel J. Evans. Senator Evans received comments from various sources and ultimately forwarded four names to the United States Justice Department for possible selection. I was not interviewed personally by Senator Evans. I was interviewed by representatives of the Justice Department and later notified that they intended to forward my name to the White House for possible consideration.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

   Answer: No.

5. Please discuss your views on the following criticism involving "judicial activism."

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

   Some of the characteristics of this "judicial activism" have been said to include

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

   b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

   c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

   d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

   e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

   Answer:

   Article III of the Constitution limits the jurisdiction of the federal courts to the adjudication of actual "cases" and "controversies." The court-created concepts of standing and ripeness have helped to define the prudential limits of the federal judiciary. However, the criticisms of "judicial activism," as outlined above, are legitimate concerns. I believe the federal courts should be mindful of these concerns when issues of jurisdiction arise. Finally, the federal courts should exercise jurisdiction only when adjudiciation is consistent with our fundamental notion of separation of powers.

AFFIDAVIT

I, Thomas Samuel Zilly, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Dated: February 25, 1988

Thomas Samuel Zilly
THOMAS SAMUEL ZILLY

Carlene Leitner
Notary Public in and for the
State of Washington, residing
at Seattle.

My commission expires
July 25, 1988.

c/d/8-5

THOMAS S. ZILLY

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Dated January 25, 1988

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	38	633	80
U.S. Government securities—add schedule N/A	0		
Listed securities—add schedule A	14	724	44
Unlisted securities—add schedule B		450	00
Accounts and notes receivable:			
Due from relatives and friends	0		
Due from others	0		
Doubtful	0		
Real estate owned—add schedule C	650	000	00
Real estate mortgages receivable	0		
Autos and other personal property	9	500	00
Cash value—life insurance		608	00
Other assets—itemize:			
See Schedule D	958	985	86
Total assets	1,672	902	10

LIABILITIES			
Notes payable to banks—secured	0		
Notes payable to banks—unsecured	0		
Notes payable to relatives	0		
Notes payable to others	5	083	65
Accounts and bills due (estimate)	3	500	00
Unpaid income tax	0		
Other unpaid tax and interest	0		
Real estate mortgages payable—add schedule E	128	732	27
Chattel mortgages and other liens payable	6	532	30
Other debts—itemize:	0		
Total liabilities	153	848	22
Net worth	1,519	053	88
Total liabilities and net worth	1,672	902	10

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	0		
On leases or contracts See Fn. 1	0		
Legal Claims See Fn. 2	0		
Provision for Federal Income Tax See Fn. 3	12	000	00
Other special debt	0		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	No		
Are you defendant in any suits or legal actions? See Sch. F	See Fn. 2		
Have you ever taken bankruptcy?	No		

Footnote 1. As a partner in the law firm of Lane Powell Moss & Miller, I have contingent liability in connection with our main lease in the Rainier Bank Tower in Seattle. The lease is current and upon withdrawal from the firm I expect to be released from any contingent liability. The firm also has leases for its offices in Anchorage, Alaska and Bellevue, Seattle and Mt. Vernon, Washington. Each of these leases is also current and upon withdrawal I expect to be released from any contingent liability.

Footnote 2.	As a partner in the law firm of Lane Powell Moss & Miller, I am a defendant (or the firm is a defendant) in several cases. Any liability will be paid by the firm or insurance carried by the firm.
Footnote 3.	1987 estimated taxes were paid based on actual income earned in 1986. My income increased in 1987 and I estimate an additional tax of up to approximately $12,000 may be payable on April 15, 1988 for the tax year 1987.

SCHEDULE A

Listed Securities

	Market Value 1/15/88
54 Shares of Ford Motor Company Washington	$2,281.50
150 Shares of Washington Mutual Savings Bank	2,062.50
31 Shares of ITT Corp.	1,441.50
440 Shares of Emerson Radio Corp.	1,262.80
50 Shares of Atlantic Richfield Company	3,767.50
230 Shares Prudential Bache Global Fund	2,120.60
163 Units Prudential Bache Money Market Assets	163.00
183 Shares Putnam Option Income	1,625.04
TOTAL VALUE	$14,724.44

I have four sons. Each son is 18 or older but may be considered members of my household. They each hold stock individually, or as beneficiary of a trust where I am the Trustee. The stock held by each son is approximately as follows. None of this value has been included in the value of my assets.

John Zilly - Assets Held Outright by John

100 Shares of Safeco Corp.
450 Shares of Washington Mutual Savings Bank
Current Interest, Inc., a money market

Paul Zilly - Assets Held in Trust

50 Shares of Paccar
100 Shares of Safeco Corp.
450 Shares of Washington Mutual Savings Bank
Current Interest, Inc., a money market

Peter Zilly and Luke Zilly Each Own - Assets Held in Trust

50 Shares of Atlantic Richfield Co.
50 Shares of Paccar
100 Shares of Safeco Corp.
450 Shares of Washington Mutual Savings Bank
Current Interest, Inc., a money market

SCHEDULE B

Unlisted Securities

50 Shares - Sound Savings Bank	$450.00

SCHEDULE C

Real Estate Owned

(1)	Home and lot at 541 McGilvra Boulevard E., Seattle, WA 98112	$500,000
(2)	House at 7429 Latona Avenue N. Seattle, WA 98115-5313	$150,000
	TOTAL REAL ESTATE VALUE	$650,000

SCHEDULE D

Other Assets - Itemized

(1)	Cabin - personal property located on Forest Service property (estimated)	$ 50,000.00
(2)	Furniture and fixtures (estimated)	10,000.00
(3)	Boat and trailer (½ interest)	5,000.00
(4)	Keogh Plan (value 12/31/87)	411,813.00
(5)	Capital account - law practice	73,225.86
(6)	Partnership interest on withdrawal	408,947.00
	TOTAL	$ 958,985.86

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SCHEDULE E

Real Estate Mortgages

(1)	Great Western Savings Bank 11201 S.E. 8th Bellevue, WA	$ 11,118.72
(2)	Continental, Inc. 8th Floor, Pacific Building Seattle, WA 98104	$117,613.55
	TOTAL	$128,732.27

SCHEDULE F

(1) I am a defendant in a dissolution proceeding now pending in King County Superior Court. The matter is pending and will involve a division of property listed on this financial statement between my spouse and me.

(2) I am a partner in the law firm of Lane Powell Moss & Miller. The law firm is presently subject to lawsuits. See Footnote 2.